

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

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| EMILY TORJUSEN, |) | |
| |) | 3:18-cv-05785-BHS |
| Plaintiff, |) | |
| |) | Tacoma, |
| |) | Washington |
| v. |) | |
| |) | March 31, 2022 |
| NATIONAL RAILROAD PASSENGER |) | |
| CORPORATION d/b/a AMTRAK, |) | Jury Trial |
| |) | |
| Defendant. |) | 9:00 a.m. |

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE BENJAMIN H. SETTLE
UNITED STATES DISTRICT JUDGE

Proceedings stenographically reported and transcript
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23
24
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EXAMINATION INDEX

| EXAMINATION OF: | | PAGE |
|------------------|---------------------------------------|------|
| ELIZABETH SCOVEL | DIRECT EXAMINATION BY MR. PETRU | 5 |
| | CROSS-EXAMINATION BY MR. BONVENTRE | 44 |
| | REDIRECT EXAMINATION BY MR. PETRU | 70 |
| DANIEL HEALLY | DIRECT EXAMINATION BY MR. LEVY | 80 |
| | CROSS-EXAMINATION BY MR. YATES | 96 |
| PATTY TORJUSEN | DIRECT EXAMINATION BY MR. LEVY | 99 |
| | CROSS-EXAMINATION BY MR. BONVENTRE | 126 |
| EMILY TORJUSEN | DIRECT EXAMINATION BY MR. PETRU | 130 |

EXHIBIT INDEX

| EXHIBITS ADMITTED | PAGE |
|-------------------|------|
| (None Admitted) | |

MORNING SESSION

MARCH 31, 2022

THE COURT: Good morning, everyone. Are we ready to bring in the jury? Our next witness is already logged in.

MR. YATES: Your Honor, may I just get Mr. Bonventre? He is in the hall.

THE COURT: Yes.

MR. PETRU: I object.

MR. BONVENTRE: Good morning, your Honor.

THE COURT: Good morning, Mr. Bonventre.

(The following occurred in the presence of the jury.)

THE COURT: Good morning, Jurors. We are ready to begin. I hope you had a restful evening.

Your next witness, Mr. Petru.

MR. PETRU: Good morning, your Honor. Our next witness is Dr. Elizabeth Scovel.

THE COURT: All right.

MR. PETRU: Dr. Scovel, if you could activate your video, please. If you can hear me, if you could start the video.

THE CLERK: Dr. Scovel, can you hear us?

THE WITNESS: Yes, I can.

THE CLERK: Sorry. You were muted. You can activate your video now.

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1 THE COURT: Good morning, Dr. Scovel.

2 THE WITNESS: Good morning.

3 THE COURT: If you would raise your right hand,
4 the oath of witness will be administered.

5 We have lost your video again.

6 MR. PETRU: I have it, your Honor.

7 THE COURT: All right. I was looking at the
8 computer screen in front of you, but it is not showing.
9 She is there.

10 If you would raise your right hand, the oath of
11 witness will be administered.

12 ELIZABETH SCOVEL,

13 having been sworn under oath, testified as follows:

14 THE COURT: Thank you, you may proceed.

15 DIRECT EXAMINATION

16 BY MR. PETRU:

17 Q. Good morning, Dr. Scovel. Thank you for making
18 yourself available.

19 A. Good morning.

20 Q. Because we are doing this by video conference, and
21 also because we should be doing it in court in any event,
22 let's be sure to allow the questions to finish before you
23 answer, and we will afford you the same opportunity to
24 finish your answer before we ask a question, so we can go
25 slow so the court reporter can get everything down. All

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1 right?

2 A. All right.

3 Q. What is your profession?

4 A. I am trained in -- my Ph.D. is in clinical
5 psychology. I have specialized training in clinical
6 neuropsychology. My profession is as a clinical
7 neuropsychologist in private practice.

8 Q. And what is it that a clinical neuropsychologist in
9 private practice does, by and large?

10 A. Predominantly, what I do as a neuropsychologist is I
11 assess children and adults in terms of what they term
12 brain behavior relationships. So how the brain processes
13 information, would be very simple. And then also to
14 understand the emotional components of what might be
15 driving certain disorders.

16 Q. Brain function and emotional disorders that may or
17 may not affect the brain and behaviors; is that fair?

18 A. Yes.

19 Q. In order for you to do this, you said you had a
20 doctorate. Where and when did you get your doctorate?

21 A. I have a doctoral degree, Ph.D., from the California
22 School of Professional Psychology. That was obtained in,
23 I believe, 1997. I completed what was called the
24 predoctoral internship.

25 Q. You have a master's degree, as well. Your

1 dissertation was -- I believe it was titled "The Influence
2 of Depression on Verbal Memory Function in Patients with
3 Temporal Lobe Epilepsy"?

4 A. Yes.

5 Q. Can you break that down for the jury in lay terms,
6 what exactly it was that means and what you were looking
7 at?

8 A. Yes. I was at the University of California
9 San Francisco in the Department of Neurology, and I was
10 using archival data of over -- I believe my patient number
11 was over 100. And what I was looking at was preoperative
12 and two encounters operative at three months and one year
13 to ascertain whether or not A resectioning of patients'
14 temporal lobes, given which hemisphere that surgery
15 occurred, would have AN influence on their verbal memory
16 scores.

17 Q. Is that because certain parts of the brain control
18 certain functions and you wanted to see the correlation
19 between treatment in those parts and function?

20 A. Yes. I was also looking at how the influence of
21 mood, depression, for example, was affected, affecting
22 verbal memory.

23 Q. With regard to the opinions and conclusions that you
24 expressed in your two reports regarding Emily Torjusen, is
25 the experience that you had, in particular the experience

1 in your dissertation, does it help inform you about the
2 correlation between brain injury and certain behaviors?

3 A. Yes.

4 Q. Where is your practice?

5 A. Vancouver, Washington.

6 Q. The jury knows from prior testimonies that you have
7 seen her, I believe, two times, first in March of 2018,
8 and then again in June of 2020, correct?

9 A. Yes. I actually saw her the day prior to her
10 evaluation in 2018, so there were three encounters.

11 Q. Okay. And what is the normal protocol that you
12 follow when you have been asked to evaluate the sequelae,
13 the problems associated with somebody who has been
14 involved in an accident where there is a concern about
15 cognitive function, emotional function, et cetera? What
16 do you normally do?

17 A. So before I actually see a patient, there is a
18 process of medical records and other ancillary relevant
19 materials that are gathered by my office staff. And I
20 sometimes -- well, I review some of those that will be
21 most relevant during the clinical interview. There is
22 also an inventory from my office that is sent out that is
23 very detailed in nature that asks a variety of questions
24 or tries to anticipate what a person is struggling with,
25 and it will allow them to share information -- detailed

1 information that I will have data at the time of the
2 clinical interview.

3 Then the patient comes in, sometimes with a family
4 member or significant person in their life. They are
5 brought to the clinical interview, and I meet with them
6 for about an hour and a half and get further clarity on
7 their disposition and how I can be most helpful.

8 Q. Once you have done the clinical interview, what do
9 you do next in terms of organizing or planning for
10 whatever testing you want to have administered?

11 A. So I then write up some form of documentation about
12 the clinical interview, and I also figure out which
13 measures will be most useful and what I believe the
14 individual can handle in terms of the test experience.

15 Q. Before we go further, I just want to get this out of
16 the way. You will share with us your diagnosis, your
17 professional opinions, your prognoses. Will all of your
18 opinions and conclusions be made to a reasonable degree of
19 neuropsychological probability?

20 A. Yes.

21 Q. With regard to Emily Torjusen, after you met with her
22 on, I guess it was the day before, on March 14th, 2018,
23 what did you determine the tools -- the proper tools would
24 be to help do an evaluation of her brain function?

25 A. I am getting that document out, if that's okay.

1 Q. Sure. Feel free to look at your notes and charts,
2 anything you have.

3 A. Would you repeat that once again? You wanted the
4 list of measures?

5 Q. I have them in front of me. We can make this easier
6 rather than you searching for it.

7 You ended up administering to her from your first
8 report something called the Behavior Rating Inventory of
9 Executive Function, that's called a BRIEF; the Continuous
10 Auditory test of attention, the CATA; the Conners'
11 Continuous Performance Test; the Finger Oscillation Test
12 or the FOT; the Rey-Osterrieth Complex Figure Test -- they
13 all have acronyms -- the RCFT; the Symptom Assessment 45
14 Questionnaire, the SA45; Trail Making Test A and B, the
15 TMTA and the TMTB, the Wechsler Adult Intelligence Scale
16 IV, or WAIS-IV; the Wechsler Memory Scale, or the WMS-IV;
17 the Wisconsin Card Sorting Test, WCST; as well as your
18 clinical interview and record review.

19 My questions are with regard to the tests that you
20 chose. Why did you select this battery of tests? What
21 were you looking for?

22 A. Well, I am going to flip to the reason for referral
23 because that will -- that always helps inform how I select
24 tests.

25 Just in brief, the purpose of testing was challenges

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1 to concentration, memory, it says balance, left-sided
2 weakness and irritability.

3 Shall we refer to these measures using the acronyms?
4 Would that be appropriate?

5 Q. Any way you want. We don't have to go through each
6 individual test, and go through why you chose each test.
7 I think that would be redundant and take some time.

8 What generally were you looking for through the
9 testing? Let me back up a little bit. In
10 neuropsychology, you don't look inside the brain with
11 scanning technology, such as DTI, you don't do sample
12 testing where you do a pathology test, something like
13 that, you want to see the brain's function without being
14 invasive, fair?

15 A. Correct.

16 Q. And are these tests designed to be able to evaluate
17 the brain's function in a way without being invasive?

18 A. Yes.

19 Q. How were the tests -- not any individual test, but
20 generally how were these tests designed?

21 A. Most of the tests that I use are normed on large
22 populations of people. So they have the physical
23 robustness, and they are -- many of them are objective
24 measures that are normed on using the normal curve.

25 Q. Can you -- I'm sorry. I violated my own rule. Go

1 ahead.

2 A. So we can make assumptions given how a person
3 performs based on where they fall on that bell curve.

4 Q. And when you say "bell curve" and "normed," you are
5 looking -- the tests look at large populations of people
6 who were screened for mental health, other issues, to try
7 to determine what, quote, "normal" would be for somebody
8 with a certain level of intelligence, for example, for a
9 certain age, things like that?

10 A. Correct.

11 Q. And then by giving these battery of tests, you find
12 out whether somebody can perform consistently across norms
13 on different tests consistent with their age, gender,
14 experience, education, or whether there are areas where
15 they fall off?

16 A. That's right.

17 Q. Or, conversely, might be superior?

18 A. Right. On either side of the average.

19 Q. Is it important to administer multiple and different
20 tests, although you might be looking at some of the same
21 properties or some of the same functions?

22 A. That's very important.

23 Q. Why?

24 A. Well, you want to see congruency in findings, and be
25 able to explain, if findings are not congruent, why is

1 that.

2 Q. How are the tests administered? What is the -- what
3 does it look like if you are a fly on the wall watching
4 somebody go through this battery of nine or ten tests?

5 A. The battery of tests typically takes anywhere from
6 three to five hours, of which the person is allowed to
7 have breaks that are appropriate. Some of the tests are
8 timed, and the memory tests need to be given in a certain
9 fashion so that so much time has elapsed to go back to the
10 measure to test for, for example, delayed memory.

11 Many of the tests are like what we call
12 paper-and-pencil instruments. Some of them are just
13 asking this patient a lot of different questions.

14 Q. And to be clear, when Emily Torjusen was tested in
15 March 2018, there was some areas of her brain function
16 that were undamaged, that performed not just to norm but
17 in some areas that were exceptional, correct?

18 A. Yes.

19 Q. But there were some areas where there was clear signs
20 of damage or functional problems, fair?

21 A. That was my opinion.

22 Q. Let's start with -- I don't know that I'm going to go
23 through every one of them, but I do want to start with
24 intellectual functioning. You did an evaluation of
25 Emily Torjusen's intellectual functioning. What were the

1 results? And you don't have to read it, but if you could
2 summarize the results of your evaluation of intellectual
3 function.

4 A. Um-hum. She was administered one of what we call the
5 gold standards of neuropsychological testing, the WAIS-IV.
6 The full scale IV, which is the amalgamation of all of her
7 (inaudible). There are four indices of the WAIS-IV, in
8 general. The full scale IV is an amalgamation of the four
9 indices that encompass verbal comprehension, conceptual
10 reasoning, working memory and processing speed.

11 Q. Go ahead.

12 A. She scored 109, which is at the upper cusp of the
13 average range.

14 Q. Which indicates that she is smart, correct? What we
15 would generally call smart?

16 A. I would say Emily is -- I would consider her smart.

17 Q. In what areas did you find that there was a deficit
18 which you believe was caused by the train wreck in
19 December 2017?

20 A. I'm looking at each of these in the summary of
21 findings. I am looking at my first report. I'm looking
22 at each of these in the summary of findings. Given that
23 -- I just want to be accurate here.

24 Q. Please.

25 A. So the working memory index, which is, as I explained

1 a moment ago, is a component of the full scale score. She
2 fell in the average range, but her processing speed, which
3 is also a component of that full scale score, fell in the
4 low average or 23rd percentile. So I would say her
5 processing speed was lower than I would have expected.

6 She also seemed to have some problems with
7 visual/spatial constructural processing.

8 Q. Can you explain to the jury what that is?

9 A. Yes. That is a very important component of
10 information processing that allows humans to make sense of
11 the spatial relationships that they encounter. It allows,
12 for example, for good driving ability, being able to
13 utilize a map to make one's way around a grocery store in
14 a sensical manner.

15 Q. Would it affect somebody who is impaired? Would that
16 cause them to get lost, for example, and lose their
17 bearings periodically?

18 A. Yes.

19 Q. In addition to -- in the "speed of mental processing"
20 section, I am looking at the report, you noted on the TMT,
21 which is the Trail Making, I believe, A, noted extremely
22 impaired abilities in processing speed, less than the
23 tenth percentile. Is that concerning?

24 A. Yes.

25 Q. Why?

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1 A. That is concerning, especially because that's a
2 fairly easy task.

3 Q. In the speed of motor processing, you found that her
4 performance pattern on the FOT utilizing her right
5 dominant hand was well below normal limits, less than a
6 2.5 standard deviation. You wrote "her performance using
7 her left nondominant hand was found to be within normal
8 limits." Right hand corresponds to the left side of the
9 brain, left hand corresponds to the right side of the
10 brain, correct?

11 A. Right. That's correct.

12 Q. And her performance -- you indicated this performance
13 pattern may implicate left hemispheric dysfunction. So
14 that would mean the left side of her head as opposed to
15 the right side, correct?

16 A. Um-hum. Yes.

17 Q. If she had a gash on her forehead above her left eye
18 and then on top of the head, would that correspond to an
19 area of the brain that would influence or affect
20 processing speed on this test using the right hand?

21 A. It could.

22 Q. You found that her language skills were in the 59th
23 percentile, in the superior range, correct?

24 A. I did.

25 Q. Does that mean that the brain injury that she had

1 didn't affect her ability to comprehend words or to write,
2 but affected other -- she could write, but because
3 processing speed was affected it might take her longer,
4 she would struggle with it; is that a fair conclusion?

5 A. Right. For example, if she is being examined at a
6 high level, like what I imagine some of her course work at
7 the University of Washington entails, where she is asked
8 during a final examination or a mid-term to provide
9 written responses to a statement or a question the
10 professor is asking of the students, even though I believe
11 Emily would most likely be able to answer the questions
12 with her high verbal acumen that we know she has, given
13 her testing, she may take much longer to provide that same
14 response and, therefore, not do as well on the exam,
15 potentially, because she wouldn't have finished.

16 Q. Or, conversely, if she is given dispensation to take
17 more time, she could do it if she has additional time?

18 A. Yes.

19 Q. Were you aware that Dr. Spohr, her primary care
20 physician, wrote a "to whom it may concern" letter to the
21 University of Washington asking for dispensation so she
22 could have more time?

23 A. I was aware when I met with Emily in June of 2020,
24 she told me she had been given that dispensation.

25 Q. Would that be consistent with a brain injury that

1 would affect the speed with which she could do things, but
2 not her ability to do them given the time?

3 A. Yes, in terms of her language processing.

4 Q. In your conclusion from 2018, you note: "In
5 consideration of the findings of empirical testing
6 measures used for this evaluation, it appears that
7 Ms. Torjusen struggles with tasks that require elements of
8 visual and auditory attention, memory and processing
9 speed." Is that essentially what you just told us the
10 test results showed?

11 A. Yes. I didn't speak yet to her attention or her
12 memory, but, yes.

13 Q. Let's go ahead and do that. I'm not guiding the ship
14 very well. Let's talk about memory and attention before
15 we go to the next sentence there. Tell us about her
16 memory issues, please.

17 A. So using another robust measure, it's called the
18 Wechsler Memory Scale, the fourth edition, is what I used;
19 there are different indices. Would you like me to break
20 them down?

21 Q. Sure, if you think that would help the jury
22 understand the problem she was having with memory at the
23 time.

24 A. Okay. I am going to a different part of the report
25 that really breaks that down very easily. Her auditory

1 memory was tested at average, 45th percentile ranking.
2 Her visual memory was average, at the 30th percentile.
3 Her visual working memory was low average, 16th
4 percentile. Immediate memory was average, at 50th
5 percentile, and delayed memory was average at 25 -- 25th
6 percentile.

7 Q. Would you have expected, based on her acumen and her
8 overall IQ evaluation, that those scores of low average at
9 the 16th percentile with working memory, delayed memory at
10 only the 25th percentile, visual memory at the 45th
11 percentile, would have been higher prior to the -- prior
12 to her brain injury?

13 A. I would have expected them to be higher.

14 Q. And what ramifications do these declines in visual,
15 immediate and -- visual, visual working and delayed memory
16 have on her?

17 A. Well, my understanding of Emily is that she was
18 engaged in complex pursuits, both with her education and
19 also her professional aspirations. I would say they would
20 have a significant impact.

21 I also think on an emotional level they have an
22 impact, in that it would be very -- kind of demoralizing
23 to feel like you were not able to function as high as you
24 had previously.

25 Q. In the "memory and learning" section of your report,

1 you write at the last sentence: "The WCST," another test,
2 "no evidence of a problem with learning was evinced."

3 Does that mean that she is capable of learning, but it is
4 a struggle for her to get there?

5 A. On the WCST, the way that is evaluated, there is an
6 indices built into the measure that shows what we call a
7 learning curve. Since I wrote that statement, most likely
8 Emily's learning curve was positive, meaning that as
9 she -- as the duration of the measure was ensuing, she
10 became more efficient at understanding how to do the
11 measure. So it would be a positive learning curve --

12 Q. So she can learn?

13 A. Yes, she can learn. But getting to your point, would
14 she have more challenge, she has the ability to learn, but
15 would it require more energy and more diligence and
16 more -- possibly finding alternatives to assist her? Most
17 likely she would need those -- that support.

18 Q. If she needs alternatives, other tools to help her,
19 then how does the -- how do your findings in attention and
20 concentration, the other area that we hadn't talked about
21 earlier, how do the deficits in attention and
22 concentration impact her learning and her overall
23 function?

24 A. Well, attention is a very important component of the
25 ability to make sense of our world, and specifically to be

1 able to learn and obtain information. Specifically, the
2 findings from this evaluation pointed out that she had
3 challenges with auditory attention, so maintaining her
4 attention throughout a task.

5 Q. Did that correlate with her clinical interview where
6 she indicated that she has difficulty, for example, in
7 studying, where she would start a subject, go get
8 distracted, clean the house, do something else, do a
9 different subject, not be able to sustain the focus over a
10 length of time?

11 A. Yes. I remember at least during one of the
12 encounters feeling as though she had told me that she was
13 having trouble with a lot of the reading material she had
14 to digest for her classes, and that it was very exhausting
15 for her. I think that's a component of it, having enough
16 ability to maintain focus, maintain concentration,
17 especially when acquiring more complex information.

18 Q. We will talk about the emotional side in a second.
19 Actually, we will talk about it now. Does the difficulty
20 in concentration, the fact that it may take her longer and
21 she has to struggle more to learn what she otherwise would
22 have learned more rapidly, does that play a role in the
23 emotional sequelae of both brain injury and PTSD, anxiety
24 and depression?

25 A. I would say so.

1 Q. How so?

2 A. Well, I think that if somebody is struggling in terms
3 of their mood, whether it is things like depression,
4 anxiety, certainly trauma that a person may be undergoing
5 due to, you know, a significant life experience --
6 threatening life experience, that that is going to impact
7 how they are able to process, especially complex
8 information.

9 Q. Going back to the conclusion. You wrote, after the
10 sentence we read earlier referencing visual and auditory
11 attention, memory and processing speed, the next sentence
12 is: "Although Ms. Torjusen is endowed with high cognitive
13 reserve and intellectual ability, it is believed that the
14 consequences of the 12/18/17 accident correlates with
15 impingements to important realms of cognitive functions,
16 making it more effortful for Ms. Torjusen to process
17 information at premorbid levels."

18 What are premorbid levels?

19 A. How she was functioning in her case prior to the
20 train derailment. So how her functioning was previously.

21 Q. That's on the cognitive side. Your next sentence
22 says, as well: "Another element of testing revealed that
23 Ms. Torjusen's high degree of generalized distress in
24 multiple areas pertaining to her mental health as evinced
25 through her personality and emotional assessment as part

1 of this neuropsychological evaluation."

2 What were the findings in terms of the personality
3 and emotional assessment testing that you did?

4 A. She was exhibiting significant levels of clinical
5 depression, symptoms of obsessive-compulsive tendencies.
6 She was very somatically focused, so focused on
7 manifestations related to her body and her health. Phobic
8 anxiety. She was more hostile. She was more -- in her
9 interpersonal relationships, she was more sensitive and
10 volatile. She was paranoid. Her thought processes were
11 kind of skewed, not to the extreme where one would think
12 she was schizophrenic, for example, but just in the
13 context of not thinking clearly.

14 Q. In your -- I'm sorry. In your clinical experience,
15 have you treated and evaluated patients such as
16 Emily Torjusen, who were young, who have had both brain
17 injury and exposure to a life-threatening event like the
18 train crash, who have a diagnosis of PTSD, have you seen
19 that combination before?

20 A. I can't think offhand of somebody, but I'm sure in my
21 20-plus years of practice I have seen that.

22 Q. Does the combination of those factors -- is it
23 consistent with findings of depression,
24 obsessive-compulsive tendencies, somatization, phobic
25 anxiety, hostility, interpersonal sensitivity, paranoia,

1 and the difficulty thinking clearly that you described?

2 A. Yes. And on this particular measure, the SA45, what
3 we find is when somebody is scoring very high on the
4 different clinical symptoms indexes, for example, the
5 depression, obsessive-compulsive tendencies, somatization,
6 when there is a lot of elevation of these -- all of these
7 scales, that is a note of what I like to term generalized
8 distress. They are almost so vulnerable and very consumed
9 by their -- how they sense themselves in the world.

10 Q. Based on Ms. Torjusen's age, I think she was 20 years
11 old when you saw her, the fact that she had been an
12 otherwise healthy, active college student who was doing
13 fine, thank you very much, who suffered this trauma and
14 then had all these changes, does it surprise you at all
15 that she endorsed the level of distress and anxiety that
16 was revealed on the SA45?

17 A. It's not surprising.

18 Q. Your report goes on and you write: "The aggregate
19 components of this evaluation reveal a strong connection
20 between reported symptoms, test findings, and what the
21 literature informs about concussion."

22 Does that mean that there is literature that talks
23 about concussions and what to expect; you did testing of
24 her to find out how her brain functions, and she reported
25 the symptoms and her experiences, and it all jibed

1 together?

2 A. Yes. I thought that there was -- I was not surprised
3 with the pattern of data that I found as it related to how
4 she had subjectively reported what were her struggles, in
5 addition to literature, that I was aware of.

6 Q. You wrote: "Post-concussion syndrome is a complex
7 disorder that can last for weeks or sometimes months after
8 the injury. A concussion is a mild traumatic brain injury
9 that does not necessarily involve the loss of
10 consciousness."

11 When there is a loss of consciousness, is that a
12 factor -- a relevant factor to consider with regard to the
13 severity with regard to the concussion and the effects?

14 A. It can be in the sense of certainly somebody loses
15 consciousness, we can make people -- physicians and
16 clinical professionals make assumptions that there is more
17 significant damage.

18 Q. So the loss --

19 A. As well --

20 Q. I'm sorry. The loss of consciousness is relevant?

21 A. It is relevant. And it is also relevant in terms of
22 the duration that a person may be unconscious. But it
23 doesn't -- in terms of post-concussive syndrome, it
24 doesn't mean that there wasn't serious effects, you know,
25 of somebody losing consciousness.

1 Q. Here, she was unconscious, but we don't know exactly
2 how long, nobody had a stopwatch on it. Is that your
3 understanding?

4 A. Right. Yes.

5 Q. I'm sorry. You go on to say that: "Research
6 indicates that most people recover after a concussion,
7 some last months, however, sometimes symptoms can persist
8 for a year or more."

9 Dr. Scovel, isn't it correct that sometimes the
10 result of a TBI can last permanently, forever, to some
11 degree or another?

12 A. Yes.

13 Q. Is it concerning that Emily Torjusen still
14 experiences symptoms associated with the TBI four and a
15 half years after this horrific accident?

16 MR. BONVENTRE: Objection. Lacks foundation from
17 this witness.

18 MR. PETRU: I will rephrase, your Honor.

19 BY MR. PETRU:

20 Q. Assuming that Ms. Torjusen still suffers some of the
21 symptoms that you have described here with regard to brain
22 function, is it concerning that four and a half years
23 after the incident she still suffers these symptoms
24 associated with a TBI with regard to the prognosis?

25 A. I would say yes, it is not surprising.

1 Q. Why is it not surprising?

2 A. Well, there is a percentage of people that do not
3 seem to recover well. Unfortunately, Emily might fall
4 into that classification.

5 Q. What is the percentage -- what is that percentage?

6 A. Um-hum.

7 Q. What is that percentage?

8 MR. BONVENTRE: Judge, I object to that category.
9 I object to "might." I object to that answer.

10 MR. PETRU: I will rephrase. I will make it
11 clear.

12 BY MR. PETRU:

13 Q. Dr. Scovel, based on everything you have learned
14 about Emily Torjusen, your evaluations in 2018 and 2020,
15 do you believe to a reasonable degree of
16 neuropsychological probability that Emily Torjusen does
17 fall into that minority who will continue to suffer beyond
18 years?

19 A. I think it is probable.

20 Q. And what is the percentage of people who have TBI who
21 suffer indefinitely?

22 A. In the literature that I am familiar with, the
23 research provides a statistic of 10 to 25ish percent.

24 Q. That would be the minority, but on a bell curve that
25 is the unfortunate few?

1 A. Correct. And it also -- I think one can imagine that
2 given how a person lives, right, how they are working
3 to -- for example, are they able to get adequate rest?
4 Are they taking good care of themselves? Are they -- if
5 they have a complex job, let's say, are they taking
6 breaks? Are they being mindful of their need given this
7 injury to step back and relax or do things that are going
8 to assist them to be healthier.

9 Q. Would that involve not just being mindful but
10 actually having the control, the ability to control those
11 factors?

12 A. It could. I'm thinking of things such as sleep. One
13 doesn't always have, for example, control over their sleep
14 state.

15 Q. You go on to indicate that sometimes symptoms --
16 excuse me -- Identified symptoms often include:
17 headaches, dizziness, fatigue, irritability -- we will
18 talk about that after the 2020 evaluation -- anxiety --
19 the same, 2020 -- insomnia, loss of concentration and
20 memory, ringing in the ears, blurry vision, noise and
21 light sensitivity. And you indicate the goal for
22 treatment after concussion is to effectively manage
23 symptoms. That's more easily said than done frequently,
24 is it not?

25 A. It is, especially as a college student, I would

1 think.

2 Q. What was your diagnostic impression in March of 2018?

3 A. I gave her a mood disorder, due to a known
4 physiological condition. What I meant by that indirectly
5 was the concussion. I gave her a diagnosis of
6 post-concussive syndrome. And then there is a V code that
7 supports the post-concussive syndrome. In Emily's case,
8 the railway train incident.

9 Q. And you also had two rule outs. First of all, what
10 is a "rule out"? What does that mean when you include in
11 a diagnostic impression a "rule out"?

12 A. A "rule out" is something that you as a clinician are
13 thinking as possibilities, diagnostic possibilities, but
14 that you still have -- you don't have enough information
15 to definitively make those diagnoses.

16 Q. And at the time you saw her in March of 2018, early
17 on, you were concerned about PTSD and ADHD, correct?

18 A. Correct.

19 Q. You recommend that she should benefit from therapy,
20 correct?

21 A. I did -- I did later. In this report, I don't have
22 recommendations.

23 Q. I thought I saw above the "diagnostic impression":
24 "Hopefully with conscious adherence to sound health
25 practices, good sleep hygiene, rehab treatment and medical

1 compliance, Ms. Torjusen may fully recover from the
2 detrimental consequences of this experience. Weekly
3 psychological counseling may also support her during this
4 challenging period." So it is kind of in the body, but it
5 wasn't a clear recommendation.

6 A. And where was that?

7 Q. That is right above your "diagnostic impression."

8 A. Um-hum, sometimes I do that. Instead of stating them
9 numerically in a recommendation section, I put them in
10 that format. So, yes.

11 Q. I spent last night going over this again to make sure
12 I could find things. You saw her again in 2020?

13 A. Yes.

14 Q. When you saw her in 2020, you also had received by
15 then the DTI report from Dr. Filler, correct?

16 A. I'm not sure where that came from. But, yes, I
17 reviewed a DTI report.

18 Q. You didn't know it was Dr. Filler's, but you got the
19 DTI report?

20 A. Yes, I did.

21 Q. And what is -- in your work as a clinical
22 neuropsychologist, what is the value of a DTI report on
23 a --

24 MR. BONVENTRE: Sorry. I apologize. Objection,
25 your Honor.

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1 THE COURT: Basis?

2 MR. BONVENTRE: We went over that with Dr. Filler
3 extensively.

4 THE COURT: I will allow a certain amount here of
5 this witness --

6 MR. PETRU: I think I understand.

7 BY MR. PETRU:

8 Q. I am not asking you to explain what a DTI does,
9 what -- the technique, the history of DTIs, the detail of
10 what's found. I am asking you, as a clinical
11 neuropsychologist, what benefit or what information do you
12 glean from a DTI when you have a patient who has been
13 examined with that high level technology?

14 A. Well, in this case, in Emily's case, it was very
15 important, because at times the neuroimaging, whether it
16 is DTI, MRI, CT, it will substantiate what you are
17 seeing -- what I am seeing as a neuropsychologist
18 clinically.

19 Q. And did the neuroimaging, the DTI imaging with all
20 its component parts, did you find it to be contradictory
21 or consistent with all of the findings that you had made
22 back in 2018?

23 A. Very consistent. Very congruent.

24 Q. In addition to it being very consistent and very
25 congruent with your findings in 2018, was it also

1 consistent and congruent with your findings in 2020?

2 A. I found in 2020 that she was having -- her cognitive
3 abilities were not as dysfunctional as in 2018.

4 Q. There had been some improvements?

5 A. Yes. But in general, I felt that there still was
6 quite a lot of congruency.

7 Q. Let's go to your 2020 evaluation. Rather than go
8 through -- let me jump through a couple of these things.
9 In language, the language skills, the area that she was at
10 the 95th percentile back in 2018, she is now scoring at
11 the 99th percentile, meaning that that part of her brain
12 was not damaged and is functioning at an exceptionally
13 high level, correct?

14 A. Yes.

15 Q. I think you described it as the very superior range?

16 A. Um-hum.

17 Q. In attention/concentration, you make note of
18 something called the Brown ADD scales. What are the Brown
19 ADD scales?

20 A. That is a subjective inventory that I like to use to
21 get a sense of an individual's own experience of their
22 attention and their capabilities.

23 Q. What was Ms. Torjusen's self-assessment of her
24 attention deficit abilities? I can't even ask the
25 question correctly, and it's only morning. Did it reveal

1 that she experienced difficulties with attention and
2 focus?

3 A. It did.

4 Q. How so?

5 A. I am going to go into the report and speak directly
6 about that measure, if you would like.

7 Q. Sure. I can't help you because I haven't highlighted
8 it.

9 A. There are these different clusters on the Brown
10 attention deficit disorder scale. The clusters are
11 activation, attention, effort, affect, memory, and then
12 there is a total score. And in all but one of those
13 clusters, she was having difficulties.

14 Q. Earlier you talked about norms, about how these tests
15 are based on an evaluation of a wide swath of people
16 within a certain demographic, and the norms will inform
17 you as to whether somebody is functioning at an average
18 level. And I understand that some of the
19 attention/concentration testing that you administered in
20 2020, she scored at an average level statistically, but
21 her perception of her abilities was greatly reduced as
22 revealed in the Brown ADD. Is that a fair summary of what
23 you found with regard to her attention and concentration?

24 A. Yes.

25 Q. Does that mean Emily Torjusen, although at the time

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1 the testing revealed her attention to be average for
2 her -- I was going to say it sucked. That is probably not
3 the right word to use. But for her, it was frustrating
4 and disappointing.

5 MR. BONVENTRE: Objection. Leading.

6 THE COURT: Sustained.

7 BY MR. PETRU:

8 Q. How does that inform you that the ADD scale showed
9 that she perceived significant impairments in many spheres
10 of attention processing while the normative scores were
11 more average?

12 A. I often actually find that in my patients that come
13 to me with attention problems, their subjective experience
14 is that they are having more problems than sometimes the
15 objective data. In Emily's case, I think -- a higher
16 functioning individual, as I have come to understand her,
17 and I think those that are higher functioning can be more
18 self aware and also have higher standards for themselves,
19 and they are also involved in more complex life pursuits.
20 So the impingement on something like their attentional
21 abilities are going to be perceived as greater.

22 Q. And if their limitations in terms of attention and
23 concentration is perceived as greater, how does that
24 impact their emotional state, the PTSD, anxiety,
25 depression, that area, that realm?

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1 A. I think it can be triggering. I also think it can be
2 very frustrating, especially with somebody that may have,
3 we were talking about earlier, slower processing speed,
4 that that can -- in a complex work, educational, or social
5 situation, that can be very frustrating.

6 Q. And with regard to that and the -- looking at the
7 same page, with regard to the visuospatial, constructional
8 processing, and speed of mental processing, both of those
9 metrics were still reduced in 2020, correct?

10 A. She scored -- yes, her visuospatial processing on a
11 variety of measures, the WAIS-IV block design, and the
12 RCFT, which is asking a person to copy a complex figure,
13 she scored in the low average range on that measure.

14 Q. What about the speed of mental processing in 2020?
15 On the TMTA, you denoted: "Extremely impaired abilities
16 in processing speeds, less than the tenth percentile."

17 A. Right.

18 Q. What does that mean?

19 A. That when she was asked to perform on that measure,
20 the TMTA, which is a fairly -- it is often used in
21 neuropsychology, and on that pretty simple measure, where
22 you are asked to connect numbers in a sequential order,
23 she was unable to do it very rapidly.

24 Q. Indicating that there was reduced processing speed in
25 that area?

1 **A.** Yes.

2 **Q.** With regard to the personality and emotional
3 assessment in 2020, you -- it looks like virtually the
4 same list as before, the SA45 continued to suggest
5 challenges with obsessive-compulsive tendencies,
6 hostility, interpersonal sensitivity, paranoia and
7 psychoticism, the same thing you talked about before. And
8 then you added to that: "Her BDI endorsements revealed
9 moderate degree of clinical depression. Her BAI
10 endorsements indicated a moderate level of anxiety."

11 What does that mean? What does all that mean to you?

12 **A.** The BDI-II stands for Beck Depression Inventory,
13 second edition, that is a very common measure used in
14 neuropsychological and psychological assessments. And
15 that was showing that on -- her symptom endorsement was
16 such that she was elevated to a moderate degree.

17 Out of 60 endorsements -- I don't know how many. I
18 would have to look specifically at how she scored. So she
19 got an 18 out of 63 points, where she endorsed in the
20 positive direction. That indicates a moderate degree --
21 excuse me. I was looking at the BAI.

22 She scored -- excuse me -- total score of 20 out of
23 63. That indicates moderate clinical depression.

24 **Q.** You also utilized a tool called the TOMM, T-O-M-M.
25 What is the TOMM? Why do you use it? What did it show?

1 A. I had a sense for this evaluation, even though I did
2 the evaluation for medical purposes, that it might be
3 important for Emily down the road to have documentation as
4 to whether or not she may be feigning more symptoms than
5 she actually had, or in our jargon we call it faking bad.
6 So being more symptomatic than you actually are, which is
7 a -- we also call that malingering. So I administered the
8 TOMM, and she had no indication of malingering.

9 Q. Indicating that the symptoms that she expressed, the
10 test results that you got, are real and genuine and
11 reflect what is going on with her?

12 A. Yes. And it shows that she was providing at the time
13 of the evaluation the best effort that she could possibly
14 provide.

15 Q. In your summary in 2020 you note that:

16 "Neuropsychologically, the test data illustrates that
17 Ms. Torjusen has probably regained many of her cognitive
18 abilities since the accident from 12/17. However, it is
19 likely that residual elements of slower mental processing
20 speed and mild problems with visuospatial relationships
21 may exist and remain. More pronounced at this time,
22 Ms. Torjusen appears to be struggling with psychological
23 and emotional elements as a reaction to and possibly due
24 to current psychosocial stressors regarding her present
25 situation." And then you go ahead and provide your

1 diagnostic impressions.

2 First of all, are the psychological and emotional
3 elements that she was experiencing in 2020 resultant from
4 the train accident in 2017?

5 A. What I understood about Emily historically, what she
6 was reporting, was that she really didn't have these kinds
7 of struggles prior to the accident, and that subsequent to
8 the accident, she continued to have these struggles
9 emotionally.

10 Q. So it is your opinion that the problems that she
11 presented emotionally in 2020 were caused by the accident,
12 correct?

13 A. I wouldn't use the word "cause." I would say they
14 most certainly correlate. There is a lot of evidence to
15 support that they correlate with what happened to her in
16 December of 2017.

17 Q. What do you mean by "correlate"? What does that
18 mean?

19 A. There is a causal relationship.

20 Q. So there is a causal relationship between the train
21 wreck and the psychological and emotional findings in
22 2020, correct?

23 A. (Witness nodding head in an affirmative manner.)

24 Q. Your diagnosis in 2020, was what?

25 A. Major depressive disorder. So in 2018 -- I didn't --

1 when Emily came to me, she was not very disclosing of what
2 had occurred regarding the accident. And I think that
3 that was probably due to what I came to understand was
4 probably post-traumatic stress disorder, that she was
5 avoiding kind of re-experiencing that. So I felt more
6 definitive that she most likely had, instead of a mood
7 disorder due to a physiological condition, that she had
8 major depressive disorder. So there was that. There was
9 the anxiety disorder. I diagnosed her with post-traumatic
10 stress disorder. I continued the diagnosis of
11 post-concussive syndrome. And then the V code.

12 Q. I'm sorry. And then the V code.

13 The diagnosis of major depressive disorder you
14 identified as recurrent, meaning that it was ongoing or
15 continuous?

16 A. Yes.

17 Q. Rather than one snapshot in time?

18 A. Right. Because I had seen that she had struggled
19 with depression two years prior during her initial
20 evaluation.

21 Q. She reported, amongst other symptoms when you saw her
22 in 2020, that she still continues to experience headaches,
23 nausea and balance problems. What is the significance of
24 her representation to you that in 2020 she still had
25 problems with headache, nausea and balance?

1 A. Well, it could be post-concussive symptoms. Most
2 likely they would -- in that I always do a medical review
3 of somebody's record, and there wasn't anything from her
4 medical record to substantiate problems with those things.

5 Q. Let me ask you about that. Does the fact that Emily
6 was 20 years old when this crash happened, and she
7 suffered the TBI at the age of 20, does that impact the
8 nature or the severity of her experience at that age in
9 her life at that time?

10 A. I would say that as a 20-year-old, her brain is still
11 developing. In addition to she is trying at 20 to acquire
12 knowledge and skills to assist her in her professional,
13 social and other life pursuits. Can you ask your question
14 again?

15 Q. Yes. Because she is 20, because she is going to
16 school, trying to gain information, developing life
17 pursuits, does the fact that she is at that point in her
18 life when she was involved in this crash and suffered the
19 brain injury, does that work together symbiotically to
20 make it worse or have a greater effect on her than it
21 might at some other time in life?

22 MR. BONVENTRE: I will object, your Honor.
23 Leading.

24 THE COURT: Overruled.

25 BY MR. PETRU:

1 Q. You can answer.

2 A. I believe so, in that she is actively trying to
3 acquire and gain and build upon who she is as a person.
4 Her being is more dynamic than somebody that, let's say --
5 I am just throwing out an age; it is irrelevant -- but
6 somebody that is further along in their profession, had
7 some stability in terms of their social existence, their
8 professional existence. Emily, as a young person, is
9 still encountering lots of elements, trying to gain
10 understanding of who she is as a person.

11 Q. As a -- I'm sorry. Go ahead.

12 A. There is likelihood she will be more impacted as a
13 20-year-old versus a 40-year-old, let's say.

14 Q. Or a 60-something-year-old.

15 Does the fact that she suffered this TBI and the
16 PTSD, and continues to experience symptomology from both,
17 put her at risk for further or more profound problems if
18 she is concussed again, if she has another injury or
19 accident or something happens and her head gets hit?

20 A. Yes.

21 Q. How so?

22 A. Research -- well, research shows the more -- the
23 cumulative effects of subsequent injury can be very
24 impactful.

25 Q. So she needs to be alert and attentive to avoid any

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1 situation where she might be impacted?

2 A. Yes.

3 Q. Forever?

4 A. Yes.

5 Q. When you saw her in 2020, she reported to you
6 interpersonal struggles with friends, losing friends. She
7 explained to you she had been living abroad in Egypt and
8 France and had at times experienced feelings of sadness,
9 often crying on public transportation. What is the
10 significance of her experiencing sadness and having
11 emotional issues when riding public transportation? How
12 does that tie together here?

13 A. She is extremely emotionally impacted when she takes
14 any form of public transportation given what her
15 experience -- being a passenger on the Amtrak train and
16 having experienced an accident that she did. There is
17 that trauma --

18 Q. I'm sorry. I missed the last part because I was
19 talking. Say it again.

20 A. It brings back a lot of trauma, reignites the trauma
21 that she suffered. And I also think, if I may say, there
22 might be some level of emotional dysregulation, where she
23 doesn't have as great a control over her emotional self
24 because of the incident.

25 Q. Is that consistent with your experience treating

1 others who have had post-concussive or TBI symptoms?

2 A. Yes. Any form of brain injury. But, yes.

3 Q. And it was specifically consistent with the area of
4 the brain where the DTI found there to be damage, correct?

5 A. Right. The frontal area of the brain is primarily
6 responsible for that.

7 Q. What effect does the fact that Ms. Torjusen has
8 difficulty with emotional regulation have on how you would
9 expect she conducts her life? How does that impact
10 somebody like her?

11 A. I think it might make her more inhibited to engage in
12 certain pursuits.

13 Q. Why would she be inhibited to engage in certain
14 pursuits?

15 A. Well, I think she will want to avoid certain
16 experiences, certain opportunities perhaps.

17 Q. Is living -- is living a life in a world where you
18 avoid opportunities, avoid things that might otherwise
19 bring you pleasure or joy, something that is difficult for
20 an individual?

21 A. Right. I think she may not feel confident in
22 handling herself in some professional relationships and
23 social relationships. She may avoid attending conferences
24 or other educational opportunities. Her whole path --
25 life path may be altered.

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1 MR. PETRU: Thank you. Those are all the
2 questions that I have.

3 THE COURT: I think we can take the morning
4 recess at this point, 15 minutes.

5 Jurors, 15 minutes. Please do not discuss the case.

6 (At this time, the jury exited the courtroom.)

7 (Recessed.)

8 THE COURT: We will bring in the jury. With
9 respect to jury instructions, I talked about a conference
10 at 1:15. I think I will postpone that. We will go a
11 while. I don't, frankly, see a lot of issues. We might
12 as well wait until the trial is close to completion to
13 make sure they conform to the evidence.

14 MR. PETRU: Thank you, your Honor.

15 MR. BONVENTRE: Thank you.

16 (The following occurred in the presence of the jury.)

17 THE COURT: Everyone, please be seated. We will
18 get Dr. Scovel back on -- video back on and sound. And we
19 have her.

20 MR. BONVENTRE: May I proceed?

21 THE COURT: You may.

22 CROSS-EXAMINATION

23 BY MR. BONVENTRE:

24 Q. Good morning, Dr. Scovel.

25 A. Good morning.

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1 Q. If you cannot hear me or if I mumble or if I speak
2 too quickly, please tell me, Doctor. Okay?

3 A. Okay.

4 Q. Doctor, you were mentioning a few minutes ago at some
5 point during direct examination, that Emily -- that it was
6 significant or it was important that Emily might be able
7 to do well in school if she got a little extra time. Do
8 you remember that?

9 A. Yes, I do remember that.

10 Q. And there was a discussion of a letter from her
11 primary care physician, Dr. Spohr, regarding giving her a
12 little extra time, correct? Do you remember that?

13 A. I believe what Mr. Petru had said is Dr. Spohr had
14 been asked to write a letter on Emily's behalf to the
15 University of Washington to give her some form of
16 dispensation.

17 Q. Right. And you said that was consistent with what
18 Emily -- Ms. Torjusen was saying to you in your findings
19 of March of 2018, correct?

20 A. That she was experiencing having the need for more
21 time?

22 Q. Correct. That was consistent -- her need for more
23 time was consistent with your findings, correct?

24 A. In 2018?

25 Q. In 2018, correct.

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1 A. Um --

2 Q. You have to say "yes" or "no," Doctor.

3 A. I want to be honest. So I want to look at the
4 report.

5 Q. Thank you, Doctor.

6 A. Her speed of mental processing was impaired, we will
7 call it, yes. So that would be consistent with that need.

8 Q. So therefore it would be consistent with improvement
9 if she didn't need the letter of dispensation after one
10 quarter and was able to do extraordinarily well without
11 extra time; isn't that correct?

12 A. I can't really speak to why she would have done --
13 been doing well. I would need to know -- have more
14 information about that.

15 Q. Well, I want you to assume that the letter of
16 dispensation, Doctor, was for one quarter, and thereafter,
17 without that letter of dispensation, she made the dean's
18 list every single quarter. Okay. So that means --
19 Doctor, it sounds like therefore she was making marked
20 improvement shortly after she saw you; isn't that correct?

21 A. I don't think just improvement can be based on
22 processing speed. I am thinking about my own educational
23 pursuits and processing speed, and some courses are not as
24 important. For example --

25 Q. Do you know what courses she was taking?

1 A. At what point in time?

2 Q. At any point in time in her career in college, did
3 you become aware of what were the courses that she was
4 taking, whether they were easy courses, difficult courses,
5 sophisticated courses? Are you aware?

6 A. In 2018, she did tell me what those courses were, I
7 believe.

8 Q. And the courses that she told you were pretty
9 challenging courses, correct, Doctor?

10 A. It's hard for me to go back four years and know what
11 courses she was taking. Can you tell me what those
12 courses were?

13 Q. Certainly. Do you know if she was taking courses in
14 Arabic, for example?

15 A. I am trying to find in my report that place. But I
16 believe -- that's not a surprise to me. I believe, yes.

17 Q. And courses in international studies; do you recall
18 that?

19 A. I would imagine that she was taking those sorts of
20 courses, because she was getting her degree in
21 international studies.

22 Q. So her ability to take complex courses like that
23 without an additional dispensation, like she had for the
24 one quarter, that is significant to you as a
25 neuropsychologist, correct?

1 A. Specifically, if I may, she was taking Arabic,
2 political science and two international relations courses.

3 Q. It doesn't sound like an easy course study, does it,
4 Doctor?

5 A. Not -- it might be easy for some people. It's a
6 rigorous -- I think what you are trying to ask, is it a
7 rigorous course of study?

8 Q. Correct.

9 A. I would say in general, yes.

10 Q. And the fact that she was able to do that, and do
11 extraordinarily well, that should be part of your
12 analysis, that's a positive finding, correct?

13 A. I am thinking that these courses, from my own
14 knowledge of what is required with political science and
15 certainly international relations, that entails a lot of
16 writing, probably a lot of analysis like that. So those
17 sorts of courses would not necessarily be as affected by
18 processing speed, if that's what you're asking.

19 Q. Just so the jury understands, Doctor, it was
20 significant that she needed a dispensation for one
21 quarter, but it is not significant that she didn't need a
22 dispensation for the rest of her college career; is that
23 what you are saying?

24 MR. PETRU: Objection. Argumentative.

25 THE COURT: Sustained.

1 BY MR. BONVENTRE:

2 Q. Doctor, is it significant for the remainder of her
3 college career she did not need extra time to do
4 extraordinarily well at college? Is that significant to
5 you as a neuropsychologist?

6 MR. PETRU: Same objection. Foundation,
7 speculation.

8 THE COURT: Sustained.

9 BY MR. BONVENTRE:

10 Q. Did you ask -- did you ever look at her transcript --
11 Emily's transcript?

12 A. I did not.

13 Q. You were aware, because it is in your records, she
14 had three majors, Doctor, correct?

15 A. I believe so. I was aware of two.

16 Q. Doctor, did you indicate in your records that she had
17 three majors?

18 A. Did I indicate?

19 Q. Yes, that her majors were political economy,
20 international studies, and near eastern languages?

21 A. May I ask where you are looking?

22 Q. Yes. On your report of 2020.

23 MR. PETRU: Which page, counsel?

24 BY MR. BONVENTRE:

25 Q. Page 3 of your report.

1 A. Yes. My understanding of what I wrote doesn't mean
2 that those are majors.

3 Q. Well, I want you to assume there has been testimony
4 in the case that she graduated -- Ms. Torjusen graduated
5 with three majors in those areas. Okay, Doctor?

6 A. Okay.

7 Q. The fact that she was able to graduate with those
8 three majors with dispensation for only one quarter and
9 get extraordinarily high grades, is that relevant and
10 significant to you as a neuropsychologist?

11 A. I think that is -- says something remarkable about
12 her, yes.

13 Q. And could it in fact say something about her
14 improvement since you saw her initially in March of 2018?

15 A. Yes. As I stated in my 2020 report, that I believed
16 she was doing better cognitively relative to 2018 when I
17 saw her.

18 Q. Actually, Doctor, you testified in a deposition in
19 this case, correct, Doctor?

20 A. I did.

21 Q. And you described her improvement from 2018 to 2020
22 as, quote, significant, correct?

23 A. Yes. I remember using that.

24 Q. So the jury understands, when you saw her two years
25 later, her improvement was significant, correct?

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1 A. Yes. On a cognitive level.

2 Q. And in fact -- let me go back to that. When you
3 first saw -- actually, let me ask another thing. You
4 indicated that someone like -- someone with Emily's
5 diagnosis might be, quote, "inhibited to engage in certain
6 pursuits and experiences." Is that what you said?

7 A. During my testimony today?

8 Q. Yes, Doctor.

9 A. Yes.

10 Q. Were you just saying that in general or are you
11 saying -- is it your position that Ms. Torjusen has, in
12 fact, inhibited -- been inhibited in engaging in pursuits
13 and experiences?

14 A. You are coming across in a little bit of a mumbled
15 way.

16 Q. I'm sure I am. Were you making that statement in
17 general or were you saying that Ms. Torjusen has limited
18 her pursuits and experiences?

19 A. I was doing both. I was speaking generally. We were
20 talking about, I believe, at that point in time her
21 psychological/emotional condition. And so I was --

22 Q. Go ahead.

23 A. With somebody that has anxiety, depression and
24 post-traumatic stress disorder, but also, you know, Emily,
25 with those disorders.

1 Q. What do you know about Ms. Torjusen's pursuits and
2 experiences that she has engaged in at her age? Could you
3 tell me what you know -- what her pursuits and experiences
4 have been?

5 MR. PETRU: Objection. Vague.

6 THE COURT: Overruled.

7 THE WITNESS: After the 2020 evaluation, I had a
8 phone conversation with Emily. She was residing in Egypt
9 at that time, I believe Cairo --

10 BY MR. BONVENTRE:

11 Q. Could I interrupt you for a second? Do you find
12 someone at that young age --

13 MR. PETRU: Excuse me, your Honor. If the
14 witness would be allowed to answer the question which was
15 posed without interruption.

16 THE COURT: It's a concern. It's important not
17 to speak over a witness and give the witness an
18 opportunity to fully answer.

19 BY MR. BONVENTRE:

20 Q. My apologies. Please continue, Doctor.

21 A. Would you ask your question again?

22 MR. BONVENTRE: Can I rephrase the question, your
23 Honor, if it's okay?

24 THE COURT: You may.

25 BY MR. BONVENTRE:

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1 Q. Are you aware that since you initially saw
2 Ms. Torjusen in 2018, she has traveled to France, Paris,
3 Europe, Cairo, Italy and Romania? Are you aware of that?

4 A. I wasn't aware that she traveled to Italy and
5 Romania.

6 Q. Okay. How many people of Emily's age do you know
7 have experienced that level of travel by her age?

8 MR. PETRU: Objection. Relevance.

9 THE COURT: Sustained.

10 MR. BONVENTRE: Judge, it is about the life
11 experiences.

12 THE COURT: Sustained.

13 BY MR. BONVENTRE:

14 Q. Have you ever seen Ms. Torjusen's LinkedIn page?

15 A. No.

16 Q. Are you aware in any way, shape or form of the
17 multiple employment and voluntary activities and
18 organizations that she has been involved in?

19 A. Some of those related to her employment.

20 Q. Let me just ask this a simpler way. Would her actual
21 life experiences that she has been living, all right, in
22 terms of her traveling, her jobs, her organizations, her
23 volunteering, her writing, would these things be
24 significant as to whether or not she is inhibiting herself
25 in her life's pursuits and experiences?

1 MR. PETRU: Objection. Compound.

2 THE COURT: Overruled.

3 THE WITNESS: I think a person like Emily has a
4 lot of abilities, just innately. She has a lot of drive
5 to pursue these things. I don't find it that surprising.
6 Somebody that goes to the University of Washington and
7 is -- probably from the get-go when she was a freshman, I
8 would imagine, started taking coursework in Arabic. I
9 know that was very important to her. And she struck me as
10 a person that has a lot of desire to travel and to engage
11 in those sorts of pursuits. So it doesn't surprise me.

12 I do think that somebody that has those drives to do
13 that may find themselves compromised, given Emily's
14 experience that she has had regarding the accident.

15 BY MR. BONVENTRE:

16 Q. Doctor, would it be fair to say that you would need
17 to know what her life experiences have been and what her
18 actual pursuits have been before you could tell a jury
19 that they have been in any way inhibited?

20 A. Well, I know that she has been inhibited. We only
21 had a brief conversation when she was living in Cairo.
22 But she told me she was actually having such a struggle on
23 public transportation that she was thinking of relocating
24 where she was residing so that she could be closer or
25 wouldn't have to take the public transportation that she

1 was taking to her employment situation.

2 Q. Okay. Doctor, that wasn't my question.

3 A. All of that is she is inhibited.

4 Q. Doctor --

5 THE COURT: Just a moment. You are talking over
6 the witness who is giving an answer.

7 You may proceed.

8 THE WITNESS: My definition of inhibited, that
9 would be an example of how I define inhibition.

10 BY MR. BONVENTRE:

11 Q. Would that definition also include what Ms. Torjusen
12 was doing in terms of traveling, writing, employment,
13 organizations and things like that?

14 A. I don't know -- you know, your line of questioning is
15 difficult for me, because I don't know what she would have
16 been doing had she not been -- had this experience.

17 Q. So how do you know she is inhibited -- excuse me. I
18 apologize.

19 MR. PETRU: Your Honor, if the witness could be
20 allowed to finish her answer before another question is
21 asked, or an interruption.

22 THE COURT: I have admonished --

23 MR. BONVENTRE: I apologize, Judge. There is a
24 delay sometimes, and I don't know if the Doctor is
25 finished.

1 THE COURT: You can pause long enough to find
2 out.

3 MR. BONVENTRE: Yes, sir.

4 THE WITNESS: Speaking to your question about
5 whether or not I would describe her as inhibited. In that
6 situation, I would describe her as inhibited. I am not
7 familiar with these other pursuits that she is having. I
8 am glad that she is able to have those experiences, but we
9 can't -- in my mind, we can't know what else she would be
10 accomplishing and pursuing had she not been -- had this
11 experience.

12 BY MR. BONVENTRE:

13 Q. Well, you don't know that one way or the -- you don't
14 know one way or the other, is that fair to say, Doctor?

15 A. When I last saw Emily and then when I followed up
16 with her on the phone after that, it sounded, at least
17 what she was conveying, that she was having some
18 experience -- she was reluctant to engage in certain
19 things because of the trauma she had suffered.

20 Q. When you first saw --

21 A. I am forming my opinion based upon what I know and
22 understand about her.

23 Q. When you first saw the plaintiff on March 14th of
24 2018, you received some medical records, correct?

25 A. Yes.

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1 Q. Where did you get those medical records from?

2 A. Did you say where?

3 Q. Where. Who sent you the medical records?

4 A. I'm looking at what I reviewed, and that will inform
5 me of that. Your question was where did I get those
6 records?

7 Q. Yes. Who sent them to you?

8 A. I would have to go into her file. Probably all of
9 the medical providers that she was interacting with.
10 There was a hospital record probably from the accident.

11 Q. Tell the jury where you got the medical records from.

12 A. Can I explain how my office operates in terms of
13 medical records?

14 Q. Certainly. Do you know if you got them from one
15 particular source or did your office go out and get
16 medical records from a bunch of sources?

17 A. Probably anything that seemed relevant for the
18 evaluation, my secretary contacted those organizations to
19 get the medical records.

20 Q. Do you have your file in front of you, Doctor?

21 A. We are talking about the 2018 evaluation?

22 Q. Yes, Doctor.

23 A. Okay. I have it.

24 Q. Are you able to ascertain -- I don't want to belabor
25 this point, Doctor. I will move on. Do you know how you

1 got the medical records? If you don't know, that's fine,
2 I will move on.

3 A. My secretary requested records from Providence Health
4 Services. These were the hospital records. We had notes
5 from Dr. Spohr, Meghan Spohr, the primary care physician.
6 I have lab reports. I have something called WSP. I'm not
7 sure what that stands for. Providence Saint Pete's
8 Hospital.

9 MR. BONVENTRE: Judge, can I speed this up and
10 interrupt for one second?

11 BY MR. BONVENTRE:

12 Q. Doctor, I'm curious, did you get the records directly
13 from the healthcare providers?

14 A. Yes.

15 Q. Fine. Thank you.

16 A. From the healthcare providers' office.

17 Q. Thank you. I appreciate it. That's what I was
18 looking for.

19 Now, could we go to Page 3 of your -- there is the
20 testing report, the neuropsychological testing report,
21 dated 3/15/18.

22 A. Okay.

23 Q. And in that report, Doctor, you indicate that usually
24 a concussion -- by the way, a mild traumatic brain injury,
25 that's another word for a concussion, correct?

1 A. Correct.

2 Q. And you said that usually the symptoms last for up to
3 three months or so, correct?

4 A. Yes. The research says -- much of the research says
5 that most of the time symptoms remit at that point.

6 Q. And you said, though, sometimes they can persist for
7 a year or so, correct?

8 A. Yes.

9 Q. And you had indicated on the next paragraph that you
10 were hopeful --

11 MR. PETRU: Excuse me, your Honor. Counsel
12 misread that.

13 MR. BONVENTRE: She just adopted what I said,
14 Judge.

15 MR. PETRU: Counsel misread it.

16 THE COURT: I don't understand your concern.

17 MR. PETRU: The report says "a year or more." It
18 doesn't say "a year or so.

19 THE COURT: Do you want to redirect the question?

20 MR. BONVENTRE: Not really. I will if the Court
21 wants me to.

22 BY MR. BONVENTRE:

23 Q. Is it approximately a year, give or take, that
24 problems can persist?

25 A. Are you asking me now?

1 Q. Yes, Doctor.

2 A. That is directed at me?

3 Q. Yes. They can persist for a year, even longer than a
4 year, correct?

5 A. Correct.

6 Q. Thank you. But you were hopeful in that very first
7 visit there would be a full recovery if she had therapy,
8 correct?

9 A. What do you mean by "therapy"?

10 Q. What did you mean by it when you said you were
11 hopeful she would have a full recovery? Did you indicate
12 that in your report?

13 A. I said, "Hopefully with conscientious adherence to
14 sound medical -- sound health practices, rehabilitative
15 treatment and medical compliance she may -- Ms. Torjusen
16 may fully recover from the detrimental consequences."

17 Q. Okay. Thank you. Now, could you go to your
18 examination in June of 2020.

19 A. Okay.

20 Q. Just so I understand it, you redid the tests that you
21 had done in 2018; you redid them in 2020, correct?

22 A. Many of them.

23 Q. Excuse me. In fact, you found she had made
24 significant progress, correct?

25 A. Not in all spheres, but some.

1 Q. Did you testify under oath in this case that her
2 progress and her improvement were, quote, significant,
3 unquote?

4 MR. PETRU: Asked and answered.

5 THE COURT: Sustained.

6 BY MR. BONVENTRE:

7 Q. I would like to go over some of those tests, okay, if
8 we could, Doctor.

9 A. Sure. Um-hum.

10 Q. So in the intellectual functioning, again,
11 Ms. Torjusen scored very high, correct?

12 A. She scored -- her full scale was the same --

13 Q. So there was no --

14 A. -- as 2018.

15 Q. Now, executive functioning, we have heard a lot
16 about executive functioning. You said, and I quote,
17 "There is no evidence of impingement to executive
18 functioning," correct?

19 A. Where are you reading, if I may ask?

20 Q. Under the section that says "executive functioning."

21 A. I can't -- I did find it. Impingements is one
22 measure.

23 Q. That wasn't my question. Doctor, did you say, and I
24 quote: "There is no evidence of impingement to executive
25 functioning"; did you say that in your report?

1 A. I see where you are reading from now. I was implying
2 given the results of the WCST, that it did not show
3 impingement to executive functioning.

4 Q. Respectfully, Doctor, I am not asking if you were
5 implying. In your report did you say, and I quote, "There
6 was no evidence of impingement to executive functioning"?

7 A. That is the sentence that follows the measure of the
8 WCST. So that sentence is linked to what I said in the
9 previous sentence.

10 Q. Okay. The next sentence after that said, "She,"
11 quote, "demonstrated no problems to executive processing."
12 Did I read that correctly?

13 A. On the TOL, Tower of London.

14 Q. Did I read that correctly, Doctor?

15 A. On that particular measure, she showed no deficits.

16 Q. And the next section is memory and learning, correct?

17 A. It is.

18 Q. And you said, quote, "No evidence of a problem with
19 learning," is that correct, "was evinced"? Did I read
20 that accurately?

21 A. On the WCST.

22 Q. And she had -- her auditory memory index was high
23 average, correct?

24 A. Yes. Um-hum.

25 Q. And working memory index was average, correct?

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1 A. Correct.

2 Q. And then, Doctor, the very next paragraph you
3 indicated that, quote, "These findings reveal marked
4 improvement or relative stability in her memory
5 constructs," correct?

6 A. Yes. I did a direct comparative analysis between the
7 prior setting and the 2020 setting.

8 Q. And so in 2020 there was, quote, "marked
9 improvement," correct?

10 A. Or relative stability. So in some areas, there was
11 relative stability. There wasn't further deficit. So it
12 was either improved or the same statistically.

13 Q. And then on the next paragraph you said, "Current
14 objective attentional psychometrics revealed no gross
15 impairment to attention, and denotes improvement in this
16 domain," correct?

17 A. Yes, compared to the 2018 setting.

18 Q. Not only compared to the 2018, but the test itself
19 showed no impairment to attention, correct?

20 A. The objective measures, yes.

21 Q. Well, you did the test because you wanted an
22 objective measure, correct?

23 A. I wanted an objective measure, yes.

24 Q. Thank you. There was also improvement in mental
25 processing speed, correct?

1 A. Looking at her WAIS-IV processing speed index, on
2 that measure, yes, but not on the other measure, the TMTA,
3 she was still impaired.

4 Q. But you did indicate in your report there is
5 improvement in mental processing speed, correct?

6 A. So the way I write my reports is when I make a
7 statement like that in the summary, it relates to the
8 measure I was just talking about.

9 Q. And with respect --

10 A. It has to do with the WAIS-IV processing speed index.

11 Q. And there was marked improvement?

12 A. Yes. Well, there was some improvement.

13 Q. Now, at the time that the plaintiff was seeing you in
14 2020, she advised you she was not taking any medications,
15 correct?

16 A. I believe -- I believe that was my understanding. I
17 would have to look in the body of the report.

18 Q. If you look, Doctor, on Page 3, the one, two, fourth
19 paragraph down, the very last sentence of that paragraph.

20 A. The key findings?

21 Q. Do you see where it says, "Ms. Torjusen has a primary
22 medical history"; do you see that?

23 A. Okay. Yes.

24 Q. The very last sentence, does it indicate that she is
25 not taking any medication?

1 A. Yes. Um-hum. That's correct.

2 Q. By the way, you indicated that she does not -- in
3 that report, that she does not meet the criteria for ADHD,
4 correct?

5 A. In my opinion, she did not exhibit the symptoms that
6 would warrant that diagnosis.

7 Q. That is further demonstration of her marked
8 improvement, correct?

9 MR. PETRU: Sorry. What was the question?

10 BY MR. BONVENTRE:

11 Q. That's further demonstration of her marked
12 improvement, correct?

13 A. Well, in 2018, I was undecided about whether or not
14 she had those symptoms of ADHD, to be quite clear. That's
15 why I put it as a rule out.

16 Q. So you indicated that your findings were improvement
17 in memory constructs, language ability, memory processing
18 speed and motor dexterity, correct?

19 A. You are looking now at the 2020 report?

20 Q. Yes, Doctor.

21 A. Where are you reading from?

22 Q. The key findings -- the same page, the key findings
23 of this neuropsychological evaluation, Doctor.

24 A. Okay.

25 Q. Did I read that correctly, that she has improvements

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1 in memory constructs, language ability, mental processing
2 speed and motor dexterity?

3 A. Yes. But if I was to write this report again I
4 probably wouldn't have included the mental processing
5 speed, because there was some ambiguity in her testing.

6 Q. But when you did write the report, prior to
7 testifying here today, you indicated that there was
8 improvement in mental processing speeds; is that correct?

9 A. I did write that.

10 Q. Okay. And in fact, what you indicated was she -- the
11 only real problem she had was the residual elements of
12 some slightly slower mental processing speed, correct?

13 A. There is a lot in this report. So if you can direct
14 my attention to where exactly you are reading from.

15 Q. In summary, at the very end, Doctor, at the very end
16 of that page on page --

17 A. Okay. Can you restate your question, please?

18 Q. Yes. Did you indicate -- I will rephrase the
19 question, Doctor, okay? I will rephrase it. Is that
20 okay?

21 A. I see the sentence that you are referring to now.

22 Q. Did I read it accurately?

23 A. "However, it is likely that residual elements of
24 slower mental processing speed and mild problems with
25 visual/spatial relationships may exist and remain."

1 Q. Right. You indicated that "she had regained many of
2 her cognitive abilities," correct?

3 A. It seems -- based upon prior -- the prior evaluation,
4 yes.

5 Q. And, Doctor, we talked a minute ago about -- you
6 indicated in 2018 you thought with appropriate treatment
7 and health and all that stuff, you thought she could fully
8 recover? Do you remember you said that a couple of
9 minutes ago?

10 MR. PETRU: Misstates the testimony, your Honor.

11 THE COURT: Just a moment. I have an objection.

12 The objection is overruled.

13 MR. BONVENTRE: Thank you, your Honor.

14 THE WITNESS: I felt that it was a possibility,
15 yes.

16 BY MR. BONVENTRE:

17 Q. That she could, quote, "fully recover," you said that
18 in 2018, correct?

19 A. I did.

20 Q. And at your deposition, following your testing in
21 2020, you said under oath you thought her prognosis was
22 even better now after 2020, correct?

23 A. Compared to 2018 when I saw her, her cognitive
24 abilities had improved.

25 Q. That wasn't my question. Did you testify under oath

1 that the prognosis in 2020 was even better than the
2 prognosis in 2018?

3 A. I don't know about prognosis.

4 Q. Doctor, do you recall testifying at a deposition?

5 A. Yes.

6 MR. BONVENTRE: Just one moment, your Honor, to
7 get to the point. I apologize.

8 BY MR. BONVENTRE:

9 Q. Doctor, did you indicate in your deposition in 2020
10 that your prognosis for her was better than when you saw
11 her in 2018? Do you recall saying that?

12 A. I am looking at the definition -- excuse me. I am
13 looking at the deposition.

14 THE COURT: If you -- excuse me. I'm sorry.
15 Would you refer to the page number and the date of the
16 deposition.

17 MR. BONVENTRE: Yes. Absolutely, your Honor.

18 BY MR. BONVENTRE:

19 Q. You were deposed, Doctor, on November 19th, 2020,
20 correct?

21 A. Yes.

22 Q. And on Page 57 and 58 you were asked about your
23 prognosis; do you recall that?

24 A. Give me time to get that.

25 Q. Please.

1 A. Okay. At the bottom I was asked, "And what is your
2 prognosis for Ms. Torjusen?" Is that what you are
3 referring to?

4 Q. Yes.

5 A. "Following the June 2020 evaluation."

6 Q. And did you indicate that your prognosis for her was
7 better than when you saw her in 2018?

8 A. Yes.

9 Q. And in 2018 --

10 A. I saw --

11 Q. And in 2018 you thought she could fully recover,
12 correct?

13 MR. PETRU: Objection. Misstates the testimony.

14 THE WITNESS: I was hopeful.

15 BY MR. BONVENTRE:

16 Q. Hopeful. Thank you.

17 A. And I -- I would like to give a little more detail,
18 if I may.

19 Q. Okay. Certainly. Go ahead.

20 A. In 2018, I had been given the referral from
21 Dr. Spohr's office to do a medical evaluation. And in my
22 report, I like to conclude after I -- in my conclusions,
23 my last paragraph, I like to provide information to the
24 patient that they can do -- that will benefit -- be
25 beneficial to them. And I like to -- in Ms. Torjusen's

1 case, as a 20-year-old, I wanted to give her some hope
2 that if she was to conduct herself in certain ways that
3 she might improve. That's what that, hopefully, was all
4 about.

5 Q. You didn't say "improve," you said "fully recover,"
6 correct?

7 A. I said fully recover or something else. I don't have
8 that in front of me right now.

9 Q. Were you lying to the patient when you said that?

10 MR. PETRU: Objection. Argumentative, your
11 Honor.

12 THE COURT: Sustained.

13 MR. BONVENTRE: I have nothing further.

14 REDIRECT EXAMINATION

15 BY MR. PETRU:

16 Q. Dr. Scovel, as part of your work, from what I
17 understand, you administer a series of tests. And as a
18 neuropsychologist, you don't just look at one test result
19 and draw a conclusion from it, you have to have some
20 concordance or congruence from several different tests,
21 batteries, correct?

22 A. Yes, that lends strength to your evaluation.

23 Q. And is it appropriate or inappropriate to take things
24 out of context and draw conclusions on them without
25 considering the whole?

1 MR. BONVENTRE: Objection. Argumentative.

2 THE COURT: Overruled.

3 THE WITNESS: Yes, it is important to look at the
4 entirety, and if there is incongruence to try to
5 understand why that might be.

6 BY MR. PETRU:

7 Q. Can you -- do you have your deposition there, still?

8 A. I do, but it is a little jumbled. But I do have it
9 in front of me.

10 Q. Counsel asked you about the testimony you gave about
11 prognosis in the deposition. And that was the bottom of
12 Page 57. The question is, "What is your prognosis for
13 Ms. Torjusen following the June 2020 evaluation?" Can you
14 please read the entirety of your answer slowly. People
15 read fast.

16 A. Yes. I wrote -- or I said in the deposition, "My
17 prognosis for her is better than when I saw her in 2018,
18 because I saw improvement on most of her measures. But it
19 is hard to be definitive because there is still some
20 outstanding issues. And in a small, around ten to
21 25 percent of people with post-concussive syndrome they --
22 they, for whatever reason, do not show significant
23 improvement longitudinally. So I don't know if
24 Ms. Torjusen will fit into that classification."

25 Q. And now, a year and a half afterwards, if she still

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1 has some of the symptomology, is it your opinion that
2 unfortunately she probably does fit into that
3 classification?

4 MR. BONVENTRE: Objection.

5 THE COURT: Sustained.

6 BY MR. PETRU:

7 Q. Assuming that she has ongoing symptomology, do you
8 have an opinion as to whether or not, unfortunately, she
9 fits into the classification?

10 MR. BONVENTRE: Objection.

11 THE COURT: Overruled.

12 BY MR. PETRU:

13 Q. You can answer.

14 A. I believe that there is a probability that she might
15 fit into that classification.

16 MR. PETRU: Your Honor, I would like to admit
17 Exhibit 5 and Exhibit 6, which are the two reports, rather
18 than go through and parse out all of the areas in
19 cross-examination.

20 MR. BONVENTRE: Objection, your Honor, for
21 reasons we have discussed before.

22 THE COURT: Was this a stipulated exhibit?

23 MR. PETRU: No. Demonstrative only.

24 THE COURT: Denied.

25 MR. PETRU: Let me use it demonstratively.

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1 Apparently, I am incorrect. There was a stipulation to
2 the first report.

3 MR. YATES: No, I don't believe so. It's not
4 stipulated. It is clearly her report.

5 BY MR. PETRU:

6 Q. I will do it this way --

7 THE COURT: If you have a hard copy, you can use
8 the ELMO --

9 MR. PETRU: I will do it this way. She will be
10 able to see it. That might be a little easier.

11 BY MR. PETRU:

12 Q. All right. This is all from the second report.
13 Counsel read a portion of executive functioning. First of
14 all, is this your second report, dated June 2nd and 4th,
15 2020?

16 A. Yes, it is.

17 Q. With regard to executive functioning, you explain in
18 response to counsel's questions that there was more than
19 one measure that were used for executive functioning. One
20 of the majors was the TMT, another one was the WCST, and
21 the third one was the TOL, correct?

22 A. Correct.

23 Q. And in your answer to counsel you tried to explain
24 that the sentences that he read needed to be read in
25 context. On the TMTB, the results placed her, meaning

1 Emily Torjusen, in the extremely impaired range,
2 explaining that that was because -- the test was completed
3 in 94 seconds, or less than the 10th percentile, correct?

4 A. Right. Correct.

5 Q. In contrast, the WCST she was able to complete the
6 task within the average levels and, hence, on that test
7 there was no impingement to executive functioning. And on
8 the TOL, she further demonstrated no problems in executive
9 functioning.

10 So you can't take the description of one of the test
11 results and apply it to all of them if it doesn't apply,
12 correct?

13 A. That's right.

14 Q. That would be unfair and inappropriate, correct?

15 A. Well, it would not be accurate.

16 Q. It wouldn't be accurate. Similarly -- sorry to do
17 this. But at the end of this I was going too fast. The
18 last sentence was, "Compared to the previous evaluation,
19 there was no apparent difference in" -- we have to go to
20 the next page -- "performance measures of executive
21 function. However, it is relevant to point out that
22 slower processing speed probably affected both her current
23 and former TMTB performance," correct?

24 A. Correct.

25 Q. Context matters?

1 MR. BONVENTRE: Objection. Is that a question,
2 Judge?

3 BY MR. PETRU:

4 Q. Does context matter?

5 A. Yes. There is a lot of nuance and subtlety in an
6 evaluation such as this.

7 Q. Counsel asked you questions about attention and
8 concentration. Again, there is more than one scale for
9 attention and concentration. One is the CATA and the
10 CPT-3. But in the middle, there is the subjective
11 endorsements on the Brown ADD scales, which found that
12 Ms. Torjusen believes she has significant impairments in
13 many spheres of attention processing. You can't ignore
14 that to the exclusion of the rest, can you?

15 MR. BONVENTRE: Compound and leading, your Honor.
16 Objection.

17 THE COURT: Leading. Sustained.

18 BY MR. PETRU:

19 Q. Can you exclude one part and ignore the rest? Can
20 you exclude one part and only comment on the others? Is
21 that appropriate?

22 A. No. A competent neuropsychologist would never do
23 that.

24 Q. On processing speed, counsel asked you questions
25 about processing speed. Let's take a look at what

1 actually was there. Ms. Torjusen's score on the TMTA
2 denoted extremely impaired abilities in processing speed,
3 less than 10 percent. Did I read that correctly?

4 A. Correct.

5 Q. However, her processing speed index on the WAIS-IV
6 reflected average abilities in the 50th percentile. Did I
7 read that correctly?

8 A. Yes.

9 Q. And then you wrote, "This depicts some improvement in
10 mental processing speed compared to her previous test."
11 Did I read that correctly?

12 A. Yes.

13 Q. You didn't say, as counsel suggested, "This depicts
14 marked improvement," did you?

15 A. No. I actually said, "Some improvement."

16 Q. With regard to Ms. Torjusen's prognosis, you talked
17 with counsel about the prognosis with regard to the brain
18 injury component of Ms. Torjusen's condition, but not with
19 regard to the emotional component, the PTSD, the
20 depression, the anxiety. What is your prognosis with
21 regard to her ongoing PTSD, anxiety and depression?

22 A. My clinical impression of Ms. Torjusen is that she is
23 reluctant to engage in, you know, individual
24 psychotherapy, which I think could support her in terms of
25 the diagnoses. That may be, in part, because of the

1 nature of PTSD.

2 Q. Have you found with other patients over the course of
3 your work, as well as the literature, that people who have
4 PTSD and have TBI are reluctant or recalcitrant to engage
5 in therapies?

6 A. Much of the time.

7 Q. Why?

8 A. It's very uncomfortable emotionally for them to --

9 Q. I'm sorry. Is she to be blamed for that in any way,
10 shape or form?

11 MR. BONVENTRE: Objection, your Honor.

12 THE COURT: Overruled.

13 THE WITNESS: It is part of the condition.

14 BY MR. PETRU:

15 Q. Is Emily Torjusen -- is Emily Torjusen to be blamed
16 for the fact that as part of her condition there is a
17 reluctance or difficulty in engaging in any long-term
18 psychotherapy?

19 MR. BONVENTRE: Objection, your Honor.

20 THE COURT: Overruled.

21 THE WITNESS: No, she is not to be blamed for
22 that.

23 BY MR. PETRU:

24 Q. She has tried, and hopefully she will try again,
25 correct?

1 MR. BONVENTRE: Objection, your Honor.

2 THE WITNESS: That's my understanding.

3 THE COURT: Just a minute. Objection sustained.
4 Leading.

5 BY MR. PETRU:

6 Q. Do you hope that she will try again?

7 A. To engage in psychotherapy, yes.

8 Q. Do you have any reason to believe that the pattern
9 that has existed for the last four and a half years,
10 however, will not repeat?

11 MR. BONVENTRE: Objection.

12 THE COURT: Overruled.

13 THE WITNESS: Can you repeat that? I didn't
14 quite hear all of it.

15 BY MR. PETRU:

16 Q. Based on your neuropsychological background, training
17 and experience, would you expect that because the pattern
18 has been over the last four and a half years to have
19 intermittent therapy which is cut short, that that pattern
20 will repeat?

21 A. It's hard for me to be definitive. I don't
22 understand -- I have not spoken to Emily about the reasons
23 for that, why she is reluctant to engage. I can only
24 surmise that she is reluctant because it is very
25 uncomfortable for her.

1 MR. BONVENTRE: Objection.

2 THE COURT: Overruled.

3 THE WITNESS: I am saying uncomfortable
4 psychologically and emotionally because of the nature of
5 post-traumatic stress disorder.

6 BY MR. PETRU:

7 Q. Based on your experience with patients such as Emily
8 who have PTSD, anxiety, depression, TBI, would you expect
9 that it is more probable than not that she will continue
10 to have that pattern with therapy, start it and stop it,
11 based on your training?

12 MR. BONVENTRE: Objection.

13 THE COURT: Basis.

14 MR. BONVENTRE: Speculative.

15 THE COURT: Overruled.

16 BY MR. PETRU:

17 Q. You can answer.

18 A. That would be my opinion.

19 Q. And that pattern is consistent with the patients you
20 have been following over the years in your practice,
21 correct, in a similar situation?

22 A. Yes. That's correct.

23 MR. PETRU: Let me check my notes. I think I'm
24 done. Thank you. That's all I have. Appreciate your
25 patience.

1 MR. BONVENTRE: No further questions, your Honor.

2 THE COURT: All right. Thank you, Doctor. You
3 are excused.

4 THE WITNESS: Thank you.

5 THE COURT: The plaintiff may call your next
6 witness.

7 MR. LEVY: Your Honor, the next witness is
8 Daniel Healy. He is appearing on Zoom as well.

9 THE CLERK: He is not in the waiting room.

10 MR. LEVY: He will be there in a second. I just
11 told him. There he is.

12 THE CLERK: Mr. Healy, can you hear us?

13 THE WITNESS: Yes. Can you hear me?

14 THE CLERK: Yes. You can turn your video on.

15 THE COURT: Good morning, Mr. Heally. If you
16 would raise your right hand, the oath of witness will be
17 administered.

18 DANIEL HEALLY,
19 having been sworn under oath, testified as follows:

20 THE COURT: All right. Thank you.

21 Mr. Levy, you may proceed.

22 MR. LEVY: Thank you, your Honor.

23 DIRECT EXAMINATION

24 BY MR. LEVY:

25 Q. Good morning. What is your name?

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1 A. David Daniel Heally.

2 Q. Where do you live?

3 A. Vancouver, Washington.

4 Q. And how old are you?

5 A. Twenty-four years old.

6 Q. What do you do for a living?

7 A. I do construction information and streaming.

8 Q. Did you say "and streaming"?

9 A. Yeah.

10 Q. What do you mean by that?

11 A. I stream video games on Twitch now.

12 Q. Do you know Emily Torjusen?

13 A. I do.

14 Q. I want to talk to you about your relationship with
15 Emily, and talk to you about some of the changes, if any,
16 you have noticed since the crash. Is that okay?

17 A. Yeah.

18 Q. When did you meet Emily?

19 A. I met her in my sophomore year of high school.

20 Q. And how did you become friends?

21 A. We met at a play for a mutual friend.

22 Q. You met at a play?

23 A. Yeah. And we became friends via the mutual friend.
24 We belonged to the same friend group.

25 Q. And did Emily enjoy going to plays in high school?

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1 A. Yeah. We went to a couple to support our friend
2 Astrid.

3 Q. Were you in the same grade as Emily?

4 A. Yes, we were.

5 Q. What was Emily like when you first met her? Please
6 describe her.

7 A. She was cheerful, easygoing, fun to be around,
8 sometimes quiet. Just more adventurous, just more
9 cheerful and happy.

10 Q. What kind of stuff did you like to do with Emily,
11 what kind of activities?

12 A. We usually went on a lot of hikes and many study
13 sessions, doing homework, going out to go see some movies
14 over time. Went to see plays with our mutual friends.

15 Q. Were you close friends in high school?

16 A. Yeah, I think so.

17 Q. Did you stay friends after you both graduated high
18 school?

19 A. Yes, we did.

20 Q. And where did you go to college?

21 A. I went to Washington State University, the Vancouver
22 campus.

23 Q. And where did Emily go to college?

24 A. She went to the University of Washington up in
25 Seattle.

1 Q. And during Emily's time in Seattle, before the crash,
2 did you ever have a chance to go and visit her?

3 A. Yes, I did go up there once to go see a concert, and
4 we stayed at Emily's apartment.

5 Q. Did you have a good time with Emily on that trip?

6 A. Yeah, it was a good time. We spent the night,
7 hanging around in the park.

8 Q. Is she easy to get along with?

9 A. Yes, very easy to get along with.

10 Q. I want to change gears and talk to you about the
11 train crash. How did you find out that Emily was in the
12 train crash?

13 A. I called her after she had -- she was out of the
14 hospital, and she told me about the incident.

15 Q. Did she tell you about the incident in detail?

16 A. Yeah, fairly graphic detail.

17 Q. Did she become emotional when she told you that
18 story?

19 A. Yeah. She started choking up. It sounded like she
20 was being pretty emotional about it.

21 Q. And you could hear that over the phone?

22 A. Yeah, I could hear it. Yeah.

23 Q. Prior to the crash, had you known Emily to be
24 somebody who would get choked up or cry often?

25 A. No, not really. I have never seen her get emotional

1 in the past.

2 Q. What did she tell you about the crash --

3 MR. YATES: Hearsay.

4 THE WITNESS: She told me --

5 THE COURT: Just a minute.

6 MR. LEVY: It goes to the effect on the listener.

7 THE COURT: What is the purpose?

8 MR. LEVY: Effect on the listener.

9 THE COURT: I'm sorry. What did you say?

10 MR. LEVY: Effect on the listener. It is not for
11 the truth.

12 THE COURT: Overruled.

13 BY MR. LEVY:

14 Q. So what did she tell you about the crash?

15 A. She told me how she was in the car and she felt all
16 of a sudden she was falling and falling over. She told me
17 how she was pinned down and couldn't move, and she felt
18 like she was bleeding, and there was dirt falling on her
19 face. She said it was a come-to-God moment, and started
20 praying, was incredibly worried she was going to die, an
21 overall traumatic experience.

22 Q. Did she say anything to you about wanting to ride a
23 train?

24 A. Yeah. In high school --

25 Q. Go ahead.

1 MR. YATES: My objection is hearsay.

2 THE COURT: I'm sorry.

3 MR. YATES: I have a hearsay objection to the
4 last question.

5 THE COURT: I am going to sustain the objection.

6 BY MR. LEVY:

7 Q. Before the crash, did Emily like trains?

8 A. Yes, she did. She said it was on her bucket list to
9 jump a train, be a bum on a train. She had done it in the
10 past.

11 Q. After the crash, did you have a chance to see Emily
12 again in person?

13 A. Yes. We hung out several times after the crash,
14 spent a lot of time together.

15 Q. Tell me about the first time you saw her after the
16 crash, how did she look?

17 A. I remember her looking rough, kind of scarred,
18 hollow, disheveled look. It looked -- it looked like it
19 changed her. She was depressed and disheveled.

20 THE COURT: I am having trouble hearing you. I
21 think it is your audio. I don't know if you can turn down
22 your mic a little bit.

23 THE WITNESS: Is that better?

24 THE COURT: It seems about the same. If you
25 speak slowly, it might overcome the audio --

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1 BY MR. LEVY:

2 Q. Do you remember the question? I would like to hear
3 your answer again. I can ask you again, if you like.

4 A. Ask me again, please.

5 Q. We were talking about the first time you saw Emily
6 after the crash. And I asked you if you could please
7 describe how she looked at that time.

8 A. I remember being with her a couple of months after
9 the crash, I think. She looked like she was roughed up a
10 bit, and she looked disheveled and stressed out and
11 (inaudible) like she was (inaudible) -- it really was a
12 trying experience with her.

13 THE COURT: Excuse me. Would it help, Dara, can
14 we turn down the volume?

15 THE CLERK: It is on his end.

16 THE COURT: I figured it was.

17 MR. LEVY: Daniel, did you turn down the volume
18 on your microphone?

19 THE WITNESS: I will turn it down.

20 MR. LEVY: Maybe turn it down a little bit.
21 Maybe don't get so close to the microphone. That might
22 help, too.

23 THE WITNESS: Is this better?

24 MR. LEVY: It is better.

25 THE COURT: Again, can you sit a little bit

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1 further away.

2 BY MR. LEVY:

3 Q. Let's give it a shot. You mentioned she looked
4 disheveled. I think you said she continued to look
5 disheveled in the subsequent times you saw her; is that
6 correct?

7 MR. YATES: Objection. Misstates the testimony.

8 THE COURT: Overruled.

9 BY MR. LEVY:

10 Q. You can go ahead --

11 A. Should I go on?

12 Whenever she would talk about it, she would get a
13 thousand-yard-stare look and then just -- multiple times
14 we spent time together, it looked like she had a lot of
15 anxiety regarding the train accident, a lot of stress. I
16 guess (inaudible) --

17 THE COURT: We are not doing well with your
18 audio. What is your proposal here, if the court reporter
19 can't take down what is being said?

20 MR. LEVY: Understood. Do you have any
21 headphones, Daniel, you can pop in?

22 THE COURT: I might add, I am having difficulty.

23 MR. YATES: So am I.

24 THE CLERK: I have the mics turned down all the
25 way.

1 THE COURT: Do we have a number that he can call
2 in?

3 MR. LEVY: There is --

4 THE COURT: Let's take our noon recess and see if
5 we can improve on this. One option, Mr. Heally, might be
6 for you -- if you have a cell phone to call into the phone
7 number that we should have there as part of the Zoom.

8 We will take our noon recess. We will return at
9 1:20. Don't discuss the case.

10 MR. LEVY: Daniel, please stay here. I will work
11 with you to get the audio sorted out.

12 (At this time, the jury exited the courtroom.)

13 THE COURT: We will see if we can improve on
14 this.

15 (Recessed.)
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AFTERNOON SESSION

MARCH 31, 2022

THE COURT: We have Mr. Heally back and apparently with somewhat better audio. We will see. Bring in the jury.

(The following occurred in the presence of the jury.)

THE COURT: Everyone, please be seated. We will resume, Mr. Levy, and see how this goes.

MR. LEVY: Thank you, your Honor.

BY MR. LEVY:

Q. Welcome back, Mr. Heally. Before we broke for lunch, I had asked you a question about how Emily looked the first time you saw her after the crash. Do you recall that?

A. The whole thing was she was disheveled and what I would call hollow, and looking a little bit roughed up, some scarring, I remember vaguely from the first time I saw her.

Q. I think you also mentioned that she looked like she had a thousand-yard stare. Is that what you said?

A. Yeah. That's what I would associate with the hollow look, like a thousand-yard stare, trying to remember that and --

Q. Now, was that thousand-yard stare something you noticed consistently in Emily since the crash?

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1 A. No. Before the crash, I have never really seen that
2 kind of expression from her. But post-crash, I would say
3 I would see it more often now.

4 Q. Based on your observations, has Emily's personality
5 changed since the crash?

6 A. She is faster to anger, more grumpy.

7 Q. Can you give me some examples of Emily's anger? Can
8 you give me some examples of Emily's anger you have
9 noticed after the crash?

10 A. Yeah. I would say she -- a good example, she gets
11 frustrated very easily, quicker to cut people off. For
12 example, like sometimes I would crack jokes that would
13 normally be okay. She would say "stop it" or tell me to
14 stop saying these kind of jokes, or stop cracking wise,
15 the usual, that kind of thing. But cutting off friends
16 and things like that.

17 Q. And in the example you just gave of when you said a
18 joke that she didn't like, how did she react to that?

19 A. She would get quiet -- she would be quiet, kind of
20 look up and say, "Don't make jokes like that," or "Don't
21 talk -- don't dig more into topics like this or I will cut
22 you off." "Don't make me cut you off," I remember is what
23 she said exactly at one point.

24 Q. Talking about cutting people off, do you have any
25 knowledge -- do you know people that Emily has cut off

1 since the crash?

2 A. Yeah, I know a couple of friends from my school that
3 she cut off.

4 Q. Can you give me some names?

5 A. There's Jocelyn Dougherty, Hanna Hague,
6 Abigail Hughes, Astrid DeBois, me maybe, I think.

7 Q. And Jocelyn was her best friend?

8 A. Yeah. She was also a roommate up in Seattle.

9 Q. And was Hanna the person that she was riding the
10 train with that derailed?

11 A. I don't know if Jocelyn was there, but I know Hanna
12 was there.

13 Q. And these people that you just listed, including
14 yourself, these are all long-term friendships that she cut
15 off?

16 MR. YATES: Leading.

17 THE WITNESS: Yes, those are long-term
18 friendships.

19 BY MR. LEVY:

20 Q. These are people that Emily knew very well from high
21 school?

22 A. Yes, I would say so. We were all very close back in
23 high school. Class of 40 people, so we pretty much knew
24 everybody and were all friends.

25 Q. But now Emily has cut them off?

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1 A. What did you say? Sorry.

2 Q. But now Emily has cut them off; is that correct?

3 A. Yeah. Well, as far as I know, yeah. I haven't -- I
4 don't really talk to those people these days.

5 Q. When is the last time you talked to Emily?

6 A. Last time was almost a year ago.

7 Q. Tell the jury the circumstances of the last
8 interaction you had with Emily.

9 A. The last time we -- she was about to go to the Middle
10 East, so she wanted to spend some time in the area before
11 her next trip. And then she wanted to go on a hike, go on
12 a walk and stuff. And I needed to go grocery shopping at
13 Costco. So we went to Costco together, and then I really
14 didn't want to go on that hike. I told her that we could
15 do this, go get coffee, and we didn't go on the hike,
16 which I don't think she was too happy about. That was the
17 last -- and she said that -- she didn't want to go get
18 coffee. She said fine. I haven't spoken to her since. I
19 tried reaching out to her but she never responded.

20 Q. Did she make herself unreachable?

21 A. What did you say? Sorry.

22 Q. She made herself unreachable; you are no longer able
23 to get in touch with her?

24 MR. YATES: Objection. Leading.

25 THE COURT: Sustained.

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1 BY MR. LEVY:

2 Q. Did she make herself unreachable?

3 A. Yeah, I would say so.

4 Q. So after being --

5 A. Sorry.

6 Q. So after being friends for nine years, she cut you
7 out of her life?

8 MR. YATES: Objection. Leading.

9 THE COURT: Sustained.

10 THE WITNESS: Do I answer the question?

11 BY MR. LEVY:

12 Q. Have you tried to get in touch with her since that
13 day?

14 A. Yeah, I have. I have tried calling her and sending
15 her messages and texts, but she never responded to them.

16 Q. Have you had any contact with Emily's mom since the
17 crash?

18 A. What did you say again? I'm sorry.

19 Q. Have you had any contact with Emily's mother since
20 the crash?

21 A. Yes. She has called me twice. The first time I
22 don't remember, the second time she was looking for Emily
23 because she had not heard from her in a couple of days.

24 Q. Can you tell me more about that?

25 MR. YATES: Objection. Hearsay.

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1 THE COURT: Overruled.

2 THE WITNESS: That call -- do you want me to
3 elaborate on the call?

4 BY MR. LEVY:

5 Q. Yes, please.

6 A. So she had gone on a trip to Arizona and was out
7 hiking. The morning of the trip she told her mom she was
8 going for a hike up in the mountains, and then she didn't
9 reach back out to her mom for quite a few hours. So her
10 mom tried calling me, seeing if I knew what she was doing
11 or how her hike was going, or if -- or if I had heard from
12 her or had any updates. I told her no, I hadn't been in
13 contact with her. I knew she was in Arizona. I didn't
14 know she was on a hike at that time. Her mom was worried
15 and wondered what was going on.

16 Q. Did you eventually talk to Emily about that?

17 A. What did you say?

18 Q. Did you eventually talk to Emily about that trip to
19 Arizona?

20 A. Yeah. She eventually got ahold of me because I left
21 her a message, because I told her her mom reached out to
22 me. When she eventually made it back to civilization, she
23 gave me a call and told me not to worry about it. She
24 also reached out to her mom and went on her way.

25 Q. Did she tell you she got lost on the mountain?

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1 MR. YATES: Hearsay.

2 THE COURT: Sustained.

3 THE WITNESS: What did you say? Sorry.

4 BY MR. LEVY:

5 Q. I will move on to a new question. I am wondering why
6 you are willing to testify here today, even though Emily
7 cut you off over a year ago?

8 MR. YATES: Objection.

9 THE COURT: Basis?

10 MR. YATES: Relevance.

11 THE COURT: Overruled.

12 BY MR. LEVY:

13 Q. You can go ahead.

14 A. What was the question again? I'm sorry.

15 Q. Emily cut you off a year ago, but you are willing to
16 testify here today, and I'm asking you why?

17 MR. YATES: Objection.

18 THE COURT: Overruled.

19 BY MR. LEVY:

20 Q. Go ahead.

21 A. Well, I still care about her. She is a friend of
22 mine that I have known for nine years. We went to high
23 school together. We pretty much grew up together. High
24 school was a very weird time for both of us. So I just
25 know the accident affected her, and I just wanted to help

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1 and put my two cents out there because I am probably one
2 of the few people she has talked to recently -- it has
3 been about a year, not recently -- that was actually there
4 before the accident and after the accident.

5 MR. LEVY: Thank you, Mr. Heally. No further
6 questions.

7 CROSS-EXAMINATION

8 BY MR. YATES:

9 Q. Good afternoon, Mr. Heally. Can you hear me all
10 right?

11 A. Yeah, I can hear you. You cut out here and there.

12 Q. My name is Andy Yates. I am one of the lawyers
13 representing Amtrak in the case. I just have a few
14 questions for you this afternoon.

15 If I understand your testimony, after you and
16 Ms. Torjusen graduated from high school, you saw her one
17 time before the derailment; is that true?

18 A. Yeah. Well, between high school and her being in
19 college and the derailment, I have only seen her one time.

20 Q. And it has been a year since you have had any contact
21 with her, true?

22 A. Yeah. About a year. She went over to the Middle
23 East.

24 Q. So you haven't had any contact with her since she has
25 returned to Cairo, Egypt this most recent time; is that

1 true?

2 A. Yeah. I haven't been in any contact with her.

3 Q. Before your testimony just now, when was the last
4 time you had contact with somebody on her legal team?

5 A. Monday, that there was going to be testimony time.

6 Q. When is the first time you were contacted by somebody
7 from her legal team?

8 A. What did you say? Sorry.

9 Q. When is the very first time that you heard from
10 somebody on Ms. Torjusen's legal team?

11 A. Three or four months ago, as far as I remember. I
12 don't remember when that exactly was. It was quite a few
13 months ago. I will shut the door. Sorry.

14 Q. That's okay. Between this first contact with
15 Ms. Torjusen's legal team three or four months ago and
16 this Monday, have you had any other contact with them?

17 A. Yeah. I have had two calls with -- with the guy who
18 was asking me questions and the guy he was working under.

19 Q. Mr. Levy and Mr. Petru?

20 A. Yeah.

21 Q. And how long did you spend talking with them?

22 A. About -- the first call was around -- I don't
23 remember, like half an hour maybe. Twelve, ten minutes,
24 half an hour. The next call was a little bit more than
25 that. I told them about how I knew Emily in high school,

1 and all that and basically more in depth at that time.

2 Q. Have you had any other conversations besides those
3 with Mr. Levy or Mr. Petru?

4 A. I forgot. I did talk to them -- was it yesterday? --
5 to go over more about when I was supposed to come up to
6 testify, because this was the first time I --

7 Q. What is your best estimate of how long you spent
8 talking with them yesterday?

9 A. Like 20 or 30 minutes.

10 Q. So from the time that they first contacted you until
11 you testified today, you have spent about two hours
12 talking with Mr. Torjusen's legal team?

13 A. If I were to add it all up, I would say it was closer
14 to an hour and a half. I wouldn't say two hours.

15 MR. YATES: Thank you very much, Mr. Heally. I
16 don't have any other questions.

17 MR. LEVY: No further questions.

18 THE COURT: Thank you, Mr. Heally. You may be
19 excused.

20 THE CLERK: You may be excused, sir.

21 MR. LEVY: Thank you, Mr. Heally. You can hang
22 up now.

23 THE COURT: Next witness.

24 MR. LEVY: The plaintiff calls Patty Torjusen.

25 MR. PETRU: For the Court's benefit, we are done

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1 with the technology, everybody's benefit.

2 THE COURT: Good afternoon. If you would step
3 forward in front of the bench here, the oath of witness
4 will be administered.

5 PATTY TORJUSEN,
6 having been sworn under oath, testified as follows:

7 THE COURT: Thank you. Please have a seat here
8 at the witness chair.

9 DIRECT EXAMINATION

10 BY MR. LEVY:

11 Q. Good afternoon, Ms. Torjusen.

12 A. Good afternoon.

13 Q. If you could speak up a little bit.

14 A. Can you hear me better?

15 Q. Yeah, that's much better. Thank you.

16 Ms. Torjusen, where do you live?

17 A. Ridgefield, Washington.

18 Q. Is that just north of Vancouver?

19 A. Correct.

20 Q. And how long have you lived in Ridgefield?

21 A. Thirty -- 28 years.

22 Q. You are Emily Torjusen's mother, correct?

23 A. Correct.

24 Q. What is Emily's birth date?

25 A. August 13th, 1997.

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1 Q. How old is she today?

2 A. Twenty-seven.

3 Q. We have brought you here today --

4 A. Twenty-four. I'm sorry. Twenty-four. I'm nervous.

5 Q. Okay. We brought you here today so you can tell the
6 jury about Emily and talk about any changes you have
7 observed in Emily since the crash. Okay?

8 A. Um-hum.

9 Q. Are you married?

10 A. Yes.

11 Q. To whom are you married?

12 A. Wayne Torjusen.

13 Q. And is that Emily's father?

14 A. Correct.

15 Q. When did you get married?

16 A. In 1990.

17 Q. And after you got married, did you start a family?

18 A. Correct.

19 Q. And how many children do you have?

20 A. Two.

21 Q. What are their names and ages?

22 A. Vanessa is 27 and Emily is 24.

23 Q. And were you a stay-at-home mother to your two
24 children?

25 A. Correct.

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1 Q. Let's talk about Emily's childhood.

2 A. Okay.

3 Q. Where did Emily grow up?

4 A. Ridgefield, Washington.

5 Q. Did she grow up in the same home?

6 A. Correct.

7 Q. How involved were you as a mother in Emily's life?

8 A. Very involved. Since I stayed at home, I did a lot
9 of school activities, drove them to school, you know,
10 helped them participate in soccer and sports and
11 after-school activities, ballet, violin. We were close,
12 spent a lot of time together.

13 Q. What schools did Emily attend, starting with
14 elementary school and going up through high school?

15 A. She attended Firm Foundation Christian School in
16 Battleground, Washington, and followed that through to Cam
17 Academy in Battleground, Washington. And she finished
18 high school at iTech Prep in Vancouver.

19 Q. And what year did she graduate from high school?

20 A. 2016.

21 Q. Did Emily have a group of childhood friends?

22 A. Yes, she did.

23 Q. And can you describe what Emily's childhood
24 friendships were like?

25 A. Right. Well, she was a pretty typical teenager, with

1 a close band of girlfriends. There was probably a core
2 group of five or six friends that hung out together a lot,
3 you know, spent weekends at each other's houses, did a lot
4 of school activities together. Like if one was in a
5 concert, they would all go, you know, to be there to
6 support each other. They did clubs together at school.

7 Q. And this core group of friends that you are
8 describing, was this group together from middle school and
9 then they stayed friends through high school?

10 A. Yes.

11 Q. And did you know this group of friends?

12 A. Yeah, fairly well. Yeah, parents, we knew them as
13 well.

14 Q. I want to talk a little bit about your family
15 activities. When Emily -- during Emily's childhood, did
16 your family go on trips together as a family?

17 A. Yeah. We enjoyed camping, like Mount Rainier, the
18 coast. We took a trip to Hawaii together. We watched TV
19 together at night, and watched movies and ate popcorn. We
20 would go to church on Sunday, you know, did -- we did do a
21 lot together as a family. Get hay in the summer, things
22 like that.

23 Q. Get hay. Do you have horses?

24 A. Yes, we have horses.

25 Q. And you said "these activities together." Did you

1 mean you would do these activities, the four of you?

2 A. Yes. And we ate dinner together. You know, just
3 family stuff.

4 Q. How often during Emily's childhood would you have
5 dinner together as a family?

6 A. We ate dinner together every night.

7 Q. That was a ritual?

8 A. Yes.

9 Q. Now, before the crash, would you please describe for
10 the jury what your relationship was like with Emily as a
11 mother?

12 A. We had a good relationship. You know, we spoke on
13 the phone together quite a lot. She would tell me about
14 her life. She had a job. She would tell me about her
15 work, her friends, her school, you know, what was going on
16 at school. They -- I did a lot of the driving, you know,
17 to here and from places she would go. I knew where she
18 was, you know, knew about her life.

19 Q. Did you ever travel just one-on-one with Emily?

20 A. We did take a trip in 2017, the summer, to Japan. We
21 went to Japan together. I think it was twelve days or
22 something, and traveled around on bullet trains from
23 Japan, Tokyo, Kiroro. It was a great trip together. We
24 got to see something new, just the two of us.

25 Q. And how did you two get along on that trip?

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1 A. It was a good trip. It was fun. It was enjoyable.
2 You know, it was a good bonding experience. I try to
3 appreciate being a stay-at-home mom, appreciate my
4 children. I feel that is one of the privileges of being
5 with them. I wanted to take advantage of it.

6 Q. I think you said some of this before. Before the
7 crash, did Emily share details of her life with you?

8 A. Yeah. Yeah. I think I knew everything that was
9 going on.

10 Q. What sort of details would she share with you?

11 A. About her work. She worked as a dishwasher in
12 several places. She would talk about the dishwashing
13 business, how they were treated. She talked about the
14 cooks at the job. She talked about her school life. She
15 was very involved in school. She was on the yearbook.
16 She won many awards in school. She was very -- a good
17 student, very good student.

18 Q. And would she tell you about trips that she would go
19 on?

20 A. With her friends you mean?

21 Q. Yeah.

22 A. Yeah. I knew where she was going and stuff.

23 Q. I want to ask you about Emily's relationship with her
24 dad. What was the relationship with her dad like before
25 the crash?

1 A. They had a good relationship. They liked to stay up
2 late and watch movies together, and then kind of talk
3 about the movies, like debate about them. They both had a
4 big interest in staying up late and talking about the
5 movies, where I would go to bed early and not be in that.
6 He did hikes with her. He was also on crew, so they had
7 shared a similar interest with the crew team. They
8 were -- had a good relationship.

9 Q. What's your husband like? How would you describe his
10 personality?

11 MR. BONVENTRE: Objection. Relevance.

12 THE COURT: Overruled.

13 BY MR. LEVY:

14 Q. You can go ahead.

15 A. Well, Wayne, I would say he is quasi military. He
16 worked on ships. He went to a military school. You know,
17 he is a guy's guy. That's how I would describe him.

18 Q. And how would Emily handle Wayne's personality before
19 the crash?

20 A. She was tolerant, you know. We all just were calm.
21 He made his point. We never really rebuttaled (sic) that
22 much. There were tiffs. It wasn't like perfect. But
23 things were always just kind of -- might have happened,
24 and two minutes later it was all better. I can't think of
25 anything like a major anything that happened early with

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1 the kids and their father.

2 Q. What about Emily's relationship with her sister
3 Vanessa, what was that like before the crash?

4 A. They are very devoted to each other. I would say
5 they are very different. They enjoy -- you know, it was
6 kind of a close-knit family. We did do a lot of things
7 together. It was a good relationship.

8 Q. After Emily graduated from high school in 2016, what
9 did she do?

10 A. She got accepted into the University of Washington.

11 Q. And how did she -- how did she get up to Washington,
12 to Seattle?

13 A. For school starting?

14 Q. Yeah.

15 A. Yeah, we brought her up. We drove her up. She was
16 in one of the big dorms. It was a triple, so she was with
17 three girls up there, and we moved her in. We saw her
18 pretty frequently, you know, maybe monthly. She would
19 come down and see us, we would go up there and see her.

20 Q. And you said "we brought her up there," is that you
21 and Wayne?

22 A. Yes. Yes. Yeah.

23 Q. During her freshman year, would Emily come home for
24 holidays?

25 A. Yes. Yeah. Yeah.

1 Q. And would she come home for birthdays?

2 A. Yeah. Yeah.

3 Q. And you said that you and Wayne would go up and visit
4 her in Seattle, too?

5 A. Right. I think there was parents' day, other events
6 that we would go see her. She brought -- over the
7 holidays, I know that first freshman year she had some
8 international students that she was really close with, and
9 she brought them down, and they spent the holidays with
10 us. She was, you know, making friends up there.

11 Q. I want to talk to you about your observations of what
12 Emily was like before the crash. How would you describe
13 Emily before the train crash?

14 A. Well, she was always a joy to us, you know, our
15 child. She was pretty easygoing. I think she had a
16 strong presence of mind, wasn't easily flustered about
17 things. She had a stable personality. I think people
18 were attracted to her, kind of a calm person to be around,
19 someone you would like to hang out with and stuff.

20 Q. How about Emily's physical health?

21 A. She had good physical health, yeah. You know, she
22 could hike and bike and row, all those things.

23 Q. How was her mental health before the crash?

24 A. She had stable mental health.

25 Q. I understand that growing up there was an instance

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1 when you took her to a therapist; is that correct?

2 A. Yeah. I could speak to that. It was a time in her
3 life where a lot of the kids had transitioned out of the
4 junior high and went to a different high school. They
5 transferred to a different high school. And we had not
6 gotten our boundary exception in early enough, so she
7 wasn't able to get in that freshman year. And so a lot of
8 kids had left and she was kind of left behind at the old
9 school. And so we noticed, you know, that she was not --
10 she was unhappy, and we were concerned. So we took her,
11 to be proactive, to a counselor in Vancouver. I think she
12 might have had two sessions. And it didn't seem like
13 anything that she was going to do was going to work for
14 her. And it did clear up. It was just a short-term
15 thing. I think it was just a loss -- finding her place in
16 the old school. And when she did get the boundary
17 exception, she rejoined at iTech, out of Cam, and things
18 got better.

19 Q. What was Emily's social life like before the train
20 crash?

21 A. I would say a pretty typical teenage social life. It
22 was very important to her, you know, hung out with her
23 friends a lot.

24 Q. Did Emily enjoy physical activities before the crash?

25 A. Yeah.

1 Q. Which activities did she participate in?

2 A. Well, we all liked hiking and kayaking. Well, we had
3 horses. She rode horses a little bit. Not really much on
4 the horses and stuff. Bike riding, walking. We live
5 on -- in rural Clark County, so there was a lot of places
6 for walking.

7 Q. What about any other hobbies? Did she play an
8 instrument?

9 A. Yeah, she was more like the musical type with the
10 violin. She did ballet, and she did art. She wasn't much
11 a drama person. I would say she was more heavy on the
12 arts end of things than like sports things.

13 Q. Did she enjoy writing?

14 A. Yes, she was always a good writer. Yeah.

15 Q. I want to change gears and talk to you now about
16 December 18th, 2017, the day of the train crash. Do you
17 recall that morning?

18 A. Yes, I do. Um-hum.

19 Q. Was Emily on that Amtrak train that morning?

20 A. Yes, she was --

21 Q. And why was Emily heading towards Vancouver on the
22 train that morning?

23 A. Well, she was heading home for Christmas -- or the
24 holidays. I know she had worked the night before at
25 Shultzy's pizza, and she was getting -- so we were

1 concerned, because she had worked that night before, about
2 her getting on the train on time, because it was a really
3 early train. My husband texted her "be sure to wake up
4 and get down there on time." We were all looking forward
5 to the Christmastime. You know, I think we were going to
6 go see the Nutcracker, bake cookies. She liked the
7 holidays, enjoyed being home for Christmas, was looking
8 forward to coming home. But we made sure she was on the
9 train on time, got there.

10 Q. And after Wayne texted her, were you watching the
11 news that morning?

12 A. Yes. Yeah. And that's when we heard, oh, breaking
13 news, Amtrak 501 accident over in Dupont, Washington. And
14 we see the train wreck on the TV news. We were confused,
15 is that the same train? What train? We were concerned,
16 panicking at that point.

17 Q. What happened next?

18 A. Then I heard -- my phone rang, and I immediately ran
19 and got the phone. I heard from Kevin. It was Kevin who
20 called. He says, "I am here with your daughter. She is
21 here." I was glad to hear she wasn't dead. I heard her
22 screaming "mommy, mommy, mommy" hysterically in the
23 background. I was thankful he was -- someone had found
24 her. He said he was taking her to the triage.

25 Q. Did you talk to Emily that morning on the phone?

1 A. That's the first time I heard her voice that morning.

2 Q. And what did she say to you when you talked to her?

3 A. Well, he just kind of gave her the phone, and she was
4 "mommy, mommy," inconsolable, hysterical. I was saying,
5 "Hon, I am on my way. I am coming to be with you." She
6 was just -- wasn't really -- she didn't really say
7 anything. I was just thankful to hear her voice on the
8 other side, and someone who found her and was taking her
9 to get treatment.

10 Q. After you received that phone call, what did you do?

11 A. I immediately got in the car and went up to Olympia,
12 Saint Peter's in Olympia.

13 Q. And when you got to the hospital, can you please
14 describe what Emily's condition -- how she looked when you
15 first saw her?

16 A. Yeah. I walk in and she is in some room. She is
17 just laying flat. It was like on a gurney. There were no
18 doctors around or anything, and she was still. It was
19 like comatose, just laying there. I didn't know if I was
20 supposed -- I didn't want to disturb her, so I just
21 quietly went and sat by her side and held her hand, just
22 said, "Mommy is here, honey," and called her "baby." She
23 didn't have any clothes on. It was like stripped with a
24 sheet over her. The back of her head -- she is laying on
25 that blue paper or whatever. It was just like a massive

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1 pool of blood. Her hair was all caked out onto it. Her
2 face had abrasions, cuts, lacerations all over. She was
3 just -- I was just petrified. You know, I just sat there
4 quietly looking at her, not knowing -- I didn't want to
5 disturb her. I didn't really know what her condition --
6 what was going on at that point, if she was in a coma or
7 she was -- what was going on.

8 Q. Ms. Torjusen, did she acknowledge your presence?

9 A. No.

10 Q. Was Emily admitted to the hospital at some point
11 after you arrived?

12 A. Yes. She was admitted to the hospital, under
13 observation for concussion.

14 Q. And how long did Emily stay in the hospital?

15 A. She was there two nights. We were there two nights.

16 Q. Can you describe for the jury what Emily's condition
17 was like over the next couple of days when she was at the
18 hospital?

19 A. They had the room very quiet. The lights were low.
20 It was very -- you know, no TV on, no commotion. It was
21 just kind of a quiet place. Doctors were kind of coming
22 in and out. She was just barely with it, barely there,
23 just kind of not a lot of conversation going on. I was
24 there kind of by her side, her presence.

25 Q. And were you holding her hand?

1 A. Yeah. Yeah.

2 Q. Was she interacting with you at that time?

3 A. Very minimal. It wasn't like we were really talking
4 about anything. I was just trying to keep her calm and
5 listen to what the doctors were saying and find out more
6 about what was going on with her condition.

7 Q. Ms. Torjusen, you previously have told me that you
8 and Emily got into an argument in the hospital. Can you
9 tell the jury what happened between you and Emily at the
10 hospital?

11 A. Yeah. On the -- it was the third day. She was
12 getting released on the third day. And like anyone, you
13 want to get out of that place, hate the hospital. Nobody
14 wants to be in the hospital. And one of the neurosurgeon
15 doctors had made it a point for her in order to get
16 released, she had to take a shower, because she still had
17 that caked bloody hair all stuck all over into her head.

18 So I remember that that's what the doctor said, a
19 condition of release would be to go and be able to take a
20 shower, get cleaned up. And so she just wanted to get out
21 of there, agitated about being in the hospital. And I
22 just said, the doctor said that we have to get -- take a
23 shower in order to do that. And she got very irate with
24 me, was very upset. I think -- I believe she was yelling
25 at me, you know, "Just get me out. I just want to get

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1 out. Let's just go. We don't have to do that. I will do
2 that when I get home," whatever.

3 It got very disruptive. The staff -- hospital staff
4 came down the hall, because we were at the end of the
5 hall, came into the room and were saying, "Don't get her
6 upset. Don't get the patient upset. You are getting too
7 much commotion." And they told me to go down into the
8 cafeteria for a while.

9 So I did go down to the cafeteria. And then later
10 on, I don't know how much time passed, I did come back up.
11 It seemed like she had taken the shower by that time, you
12 know, things were progressing. So we were able to get
13 discharged that day.

14 Q. Had you ever seen Emily act like that before?

15 A. Not like that, no.

16 Q. Were you surprised by that?

17 A. Yes. Yeah. It seemed like a reasonable thing. And
18 she was just acting unreasonable, not thinking correctly.

19 Q. What was your understanding of Emily's diagnosis at
20 discharge?

21 MR. BONVENTRE: Objection, your Honor.

22 THE COURT: Overruled.

23 BY MR. LEVY:

24 Q. You can go ahead.

25 A. That she had a concussion, that she had some other --

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1 clavicle problems with her shoulder, her clavicle fracture
2 or something like that. She had some stitches in her
3 forehead. At that point, the cuts and bruises -- her face
4 was getting really swollen up and black and blue all over,
5 that whole thing. That was what they told me was her
6 condition.

7 Q. Did anyone give you any instructions on discharge for
8 the kind of care that Emily would need when she went home?

9 A. Right. It was just very low stimulus, not a lot of
10 visitors, not a lot of commotion. So we kept her room
11 very dark and stuff. Yeah. We were prepared to keep
12 things very quiet.

13 Q. Where did you take Emily after she was discharged?

14 A. Home.

15 Q. And what was Emily's condition on the drive home?
16 Did you notice anything different than typical?

17 A. Yeah. I mean, her arm was like in a sling. She
18 looked very uncomfortable. I know she was uncomfortable
19 in the car, the movement of the car, being in a car.

20 Q. How could you tell that?

21 A. It was like grabbing, clutching for extra safety
22 devices besides the seatbelt and everything like that.

23 Q. What about her energy level?

24 A. She was very low energy. I think she was -- it was
25 good getting her home. I felt she would -- it would be

1 good for her to be home.

2 Q. So where did Emily stay in the first couple of weeks
3 after the crash?

4 A. Yeah. Well, it was her Christmas break, so she
5 stayed at home, mainly up in her room. We kept it very
6 sedate. I think I checked on her. I just didn't disturb
7 her a lot. I would bring her some food. She didn't
8 really eat a lot. She was not hungry. Kind of kept
9 things quiet. I would go and visit her. I think she was
10 having some troubles resting, even though she seemed very
11 fatigued, very sleepy. I think it was uneasy rest.

12 Q. Did you notice any irritability in Emily during those
13 first couple of weeks?

14 A. Yeah. She was having a hard time coping and healing
15 and just traumatized by what had happened.

16 Q. During those first couple of weeks when she was at
17 home, did you take Emily to see any doctors?

18 A. Correct. Right. We followed through with Dr. Spohr,
19 which is her family physician, was her pediatrician and
20 then grown-up doctor, just to follow through on her
21 progress, and to kind of set, you know, a baseline with
22 her improvement. We followed through and --

23 Q. Did you take her to Dr. Spohr because of your concern
24 about the post-concussive symptoms?

25 A. Yes.

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1 Q. And eventually Emily went back to school in Seattle,
2 correct?

3 A. Yes. Yes.

4 Q. How did you feel about that decision at the time?

5 A. I did not think it was a good decision. I wanted her
6 to take the semester off.

7 Q. Why is that?

8 MR. BONVENTRE: Objection, your Honor.

9 THE COURT: Basis?

10 MR. BONVENTRE: Ms. Torjusen is not a party in
11 the case. Her feelings, respectfully, are not --

12 THE COURT: Overruled.

13 THE WITNESS: I didn't want her to go back. I
14 thought it was too much for her to handle shortly after
15 the accident. I mean, I think classes started January
16 3rd. So it was a short break. I just wanted her to rest
17 and stay home and rehabilitate. Our core doctors were
18 down in the area. I don't know anybody in Seattle who
19 could watch -- take care of her up there. I thought it
20 was just way too early.

21 BY MR. LEVY:

22 Q. How did she get back to Seattle?

23 A. We drove her up there.

24 Q. You and Wayne?

25 A. Wayne and I took her up there. She had an apartment.

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1 That is kind of what she was saying, she had an apartment
2 with her friends, so she couldn't leave her roommate
3 stranded. She had already signed up for her classes.

4 Q. Do you recall the next time you saw Emily in
5 Vancouver or Ridgefield?

6 A. That would be spring break, would be like March. She
7 was up there the rest of January and February up in
8 Seattle trying -- you know, trying to maneuver and get
9 around and handle -- cope with classes and everything.

10 Q. And during her visit down to Ridgefield in the spring
11 of 2018, did Emily have any neuropsychological testing
12 with Dr. Scovel?

13 A. Yes. Yes.

14 Q. And were you involved in any way in getting Emily to
15 see Dr. Scovel?

16 A. Yes. I had heard things about her having panic
17 attacks up in Seattle. I was worrying about her being up
18 there with trauma symptoms, things going on in her life.
19 I was trying to be proactive and seek some help for her,
20 getting some testing. We went to Dr. Spohr, the family
21 physician again. I asked for a referral from her, because
22 you just don't get in to these people. You have to get a
23 referral. So we did that. Tried to get that done in that
24 spring break week.

25 Q. Did my law firm play any role in Emily seeing

1 Dr. Scovel in 2018?

2 A. I don't think we signed on -- it is Emily, she didn't
3 sign on with you guys until April or end of March. No.

4 Q. I want to talk to you about changes with Emily since
5 the train crash. Have you noticed any changes in Emily
6 since the train crash?

7 A. Yes.

8 Q. Can you tell the jury what you have noticed?

9 A. Emily is a very, very short fused, easily upset. My
10 relationship with her is very fragile, I would describe
11 it. I am very careful not to upset her. I don't ask her
12 a lot of questions. I just -- I listen -- you know,
13 listen to her, try to be supportive. She has a very quick
14 trigger. She gets very upset very easily. It's like
15 walking around on eggshells with her.

16 I feel like I have lost my daughter. She is not the
17 family member she once was. She is not the person I once
18 knew. It's a different type of relationship. I still
19 want to have a relationship. I strive to keep a
20 relationship with her, but I am afraid that she could
21 easily just not associate with me anymore. So I don't
22 want that to happen. I think I bend over backwards to
23 kind of keep things on an even keel with her.

24 Q. How often do you talk to her now?

25 A. Well, not much.

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1 Q. How often, approximately?

2 A. Well, lately I will text her, "I would like to talk
3 to you." And then sometimes I don't hear back, so then I
4 call and, you know, leave a message. And then I don't
5 hear back, and then I might call the next day, and I don't
6 hear back. Eventually, she does get back to me. I would
7 say maybe once a month, something like that. I mean, she
8 has been living overseas. It would be nice to have
9 FaceTime or whatever they do, Skype, whatever. None of
10 that. I think I have gotten one picture from her. I
11 think I got a picture of her at Christmas. I really don't
12 know what -- yeah. Not a lot going on.

13 Q. What about her relationship with her father, how has
14 that changed since the crash?

15 A. She has not really spoken with her father since like
16 March.

17 Q. March of what year?

18 A. March of 2017.

19 Q. March of 2017?

20 A. The accident was in December. She came home for the
21 spring break, 2018. I'm sorry. March of 2018 for the
22 spring break. They had an argument. She couldn't stand
23 being in the house any longer. So I had to take her to
24 the bolt bus so she could go back to Seattle. Really
25 since then, they have not communicated much.

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1 Q. You shared with me a story where Emily wanted to use
2 a kayak, and she had a confrontation with her dad. Can
3 you share that story with the jury?

4 A. Well, you know, she was home briefly with the COVID.
5 She came home to live with us. We were all trying to get
6 along, because there was nowhere else for her. She was
7 with us. It kind of like was a two-part story. It
8 started out she bought a little rubber raft and she wanted
9 to do a float trip down the Lake River, which is near us.
10 My husband told her not to go on the Lake River with a
11 little rubber raft. And she disobeyed him or didn't
12 listen to him.

13 Q. What were the weather conditions that day?

14 A. Yeah, well, it was like early -- mid-March -- after
15 March. Probably the first of April. And it was not nice
16 weather. And the raft is a cheap blowup raft. I don't
17 think she had any safety -- he is very safety oriented
18 from his days on the ship. She didn't have any safety
19 vest, things like that.

20 Q. Do you know why Wayne didn't want her to go on the
21 kayak?

22 A. He was afraid she would get hypothermia.

23 Q. Because he didn't want her to go on the kayak, did
24 that lead to a fight between the two of them?

25 A. The raft was a short fight. And then the big blowup

1 was shortly after that. She wanted to borrow his kayak,
2 and he said no. It's his kayak, he didn't want her to
3 borrow it. He said no. That was the big blowup. She
4 yelled and screamed about that.

5 Q. Emily stopped talking to her dad because he didn't
6 want her to use his kayak?

7 A. That's correct. You know, it seems like a little
8 thing people would normally get over, patch up, but she
9 just refuses to talk to him.

10 Q. You mentioned before that one of the changes that she
11 has had since the accident is she has a short fuse.

12 A. Um-hum.

13 Q. Can you give the jury an example of her having a
14 short fuse?

15 A. Well, the most recent one, you know, before she left
16 for overseas, she had collected all these plants in her
17 apartment. She would get them on Craigslist or something.
18 She had quite a plant collection.

19 Q. How many plants do you think she had?

20 A. It had to be over a hundred. Seriously, over a
21 hundred plants. And I kind of saw -- I never saw her
22 apartment until very later on, where she was living up
23 there. And I said, oh, they are kind of nice. I never
24 said I would take care of her plants for her. Maybe a
25 couple of them or something. But we went away one

1 weekend, and when we came back right before she left, she
2 had filled her entire bedroom with these plants. And she
3 is like, "Oh, mom, you can take care of these while I'm
4 gone." And I said, "No, I'm not going to take care of the
5 plants. It's just too many plants. I'm not taking care
6 of them." And she opened her bedroom window from the
7 second floor and just started tossing these plants out the
8 second story window onto the deck below, and the pottery
9 things were breaking, and there was dirt and plants --
10 tons of plants on the deck below. And I tried to say,
11 "Well, maybe five. I will take care of five." But I
12 didn't want anything more to go wrong. So I just kind of
13 left and let all the plants go out the window.

14 And then she -- we had a child's playhouse, and she
15 spray-painted all kinds of crap inside the child's
16 playhouse. That was the night before she left. So she
17 didn't allow me to take her to the airport to say
18 good-bye. Her sister drove her to the airport, the first
19 part of June.

20 Q. Did you ever observe Emily behaving like that before
21 the crash?

22 A. No. No. No.

23 Q. What about Emily's relationship with her sister
24 Vanessa today, what's the state of that?

25 A. They don't communicate. There is no communication

1 between the two of them.

2 Q. Have you noticed any changes in Emily's social life
3 since the crash?

4 A. I don't think she has any -- she is not in touch with
5 anybody she knows. I think she has burned a lot of
6 bridges, said things that might have caused problems with
7 people. She just doesn't communicate with them anymore.

8 Q. Since the crash, have you been concerned about
9 Emily's safety?

10 A. Yes.

11 MR. BONVENTRE: Objection, your Honor.
12 Relevance.

13 THE COURT: Relevance? Overruled.

14 THE WITNESS: I have been concerned about her
15 safety when she -- after she had the explosion with my
16 husband, she moved out. It was COVID or whatever, and
17 she -- I didn't know where she moved to. I never saw it.
18 But she took a cushion, like a cushion from a lounge chair
19 for outside, put it in her car and moved up to Kelso. It
20 was later on, months later, I did see it. It was not a
21 very nice place. It was like a month by month, very
22 transient housing, you know, cockroaches, the whole thing.
23 I was worried about her living situation there.

24 BY MR. LEVY:

25 Q. Did she have a bed?

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1 A. No. No. I felt bad about that. We had a mattress.
2 Anyway, she had like a cushion. And then during her -- up
3 in Kelso, she was working on a campaign. I found this out
4 later. There was nothing -- anyway, she was like car
5 camping in Aberdeen and Grays Harbor area at the beach,
6 staying overnight while she was working the campaign down
7 there, which I don't feel is safe. Even just leaving the
8 country to Egypt and COVID and all this just doesn't seem
9 safe to me.

10 Q. You testified that before the crash Emily shared
11 details of her life with you. Is that still the case
12 today?

13 A. No. I don't know much about her life. I think I
14 have seen things on LinkedIn about her. I don't know.

15 Q. Have you ever had a conversation with Emily about her
16 future?

17 A. I don't know if she really knows what is going on
18 with her future.

19 MR. BONVENTRE: Objection, your Honor.
20 Speculation.

21 THE COURT: Overruled.

22 THE WITNESS: I don't think she had a plan in
23 Cairo. I know she found someone to live with in Cairo on
24 Craigslist, and then she didn't have a job there. So she
25 just moved there with no plan. Yeah, I don't know if

1 that's the future. I --

2 BY MR. LEVY:

3 Q. Are you concerned about your relationship with Emily?

4 A. Yeah. You know, I continue to be there. I don't
5 want to -- I don't want to lose her. I don't feel -- it
6 has been a big family disruption. We are not the -- we
7 don't get together for any holidays or anything anymore.
8 I do love her very much and want to be -- you know, have
9 her in my life. I am willing to bend over backwards, do
10 what I have to do to have her stay in my life.

11 MR. LEVY: Thank you, Ms. Torjusen. No further
12 questions.

13 MR. BONVENTRE: I just have a very few questions,
14 Ms. Torjusen.

15 CROSS-EXAMINATION

16 BY MR. BONVENTRE:

17 Q. Good afternoon, ma'am. Just a very few questions.
18 My understanding is that your daughter, Emily -- can I
19 refer to her as Emily while we are asking questions?

20 A. Um-hum.

21 Q. Emily went back to college January 3rd after the
22 incident, after the train accident; is that correct?

23 A. Yes.

24 Q. And so she was up in college. Did you drive her; is
25 that what you said?

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1 A. My husband and I drove her back up here.

2 Q. And then you didn't see her until sometime in March,
3 several -- three months later?

4 A. Right. Well, yeah, a month and a half or so.

5 Q. From January to March?

6 A. Yeah.

7 Q. You mentioned something about in high school you had
8 wanted Emily to go to therapy, correct?

9 A. She did go twice.

10 Q. And then you said after two visits she stopped, I
11 think your words were, because it wasn't her thing,
12 correct?

13 MR. LEVY: Objection. Misstates testimony.

14 THE COURT: Sustained.

15 BY MR. BONVENTRE:

16 Q. Did you say she stopped -- I think your exact words
17 were she didn't want any part of it; is that correct? I
18 believe that's exactly what you said.

19 A. I don't think she was getting anywhere with it.

20 Q. Do you recall -- she didn't like therapy, correct?

21 A. I don't think she felt she had to be there for the
22 reasons that we thought she should be there.

23 Q. So you disagreed with her on that issue in high
24 school?

25 A. I was trying to be proactive, but if he wasn't

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1 addressing something she needed, she didn't go, no. I
2 can't force her to go.

3 Q. So you had mentioned about Emily's relationship with
4 her father -- currently with her father. And I am trying
5 to be respectful. Ma'am, would it be fair to say that her
6 father, being from the military, I believe you said he is
7 very disciplined, was very much a disciplinarian?

8 A. No, I wouldn't say he's a disciplinarian.

9 Q. How would you describe him? He had certain rules he
10 wanted followed; is that fair to say?

11 A. No, I wouldn't say that.

12 Q. You said they had some tiffs before; is that correct?

13 A. Not many, no.

14 Q. Did they have any disagreements?

15 A. I'm certain throughout her 18 years at home there was
16 probably some disagreements, but they were always handled
17 appropriately.

18 Q. You said -- when you had heard about the accident,
19 you immediately went to the hospital; is that correct,
20 obviously?

21 A. Yeah, I drove up there.

22 Q. I take it you picked up your husband so that he could
23 go with you?

24 A. No.

25 Q. He did not go with you?

1 A. No. Because we have 20 acres, we have two horses,
2 and animals. Just to drop everything -- it was better
3 that one of us go.

4 Q. So is it correct then Emily's dad did not go to the
5 hospital to see her when she was in the hospital?

6 A. No, he was not there.

7 Q. He did not go to the hospital?

8 A. No, he did not go to the hospital. And I will tell
9 you, those rooms were so small. There was no place for
10 two people.

11 Q. So he stayed home, I believe you said with the
12 property and the horses, and you went to the hospital; is
13 that correct?

14 A. Yes.

15 MR. BONVENTRE: I have nothing further. Thank
16 you very much, ma'am.

17 MR. LEVY: Nothing further, your Honor.

18 THE COURT: Thank you. You may step down.

19 MR. PETRU: Your Honor, at this time we are going
20 to call Emily Torjusen.

21 THE COURT: Good afternoon, Ms. Torjusen. If you
22 would step forward in front of the bench, you will be
23 sworn.

24 EMILY TORJUSEN,
25 having been sworn under oath, testified as follows:

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1 THE COURT: Please have a seat here at the
2 witness chair.

3 DIRECT EXAMINATION

4 BY MR. PETRU:

5 Q. I am going to try to make this as easy as possible.
6 I know this is difficult. Your mother shared a lot about
7 your early life, so I'm not going to go over a lot of
8 those details. I wanted to ask you about a few things
9 that she talked about. As a kid, you were in ballet?

10 A. Yes.

11 Q. And played the violin?

12 A. Yes.

13 Q. Did you enjoy those things?

14 A. Yeah. I wasn't very good, but, yeah.

15 Q. You were in crew?

16 A. Yes.

17 Q. That was in high school?

18 A. Yes.

19 Q. And you, as a family, liked to go camping?

20 A. Yes.

21 Q. Did you enjoy that?

22 A. Yeah.

23 Q. How would you describe your feeling as part of the
24 family unit with your mother and father and your sister
25 before the crash?

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1 A. I felt like we were a pretty typical family.

2 Q. Do you miss that?

3 A. I think -- yes, of course, I miss them.

4 Q. You went with your mother to Japan in the summer of
5 2017 before the crash. And one of the things that she
6 shared with us is that you and she checked out Japan, went
7 all over the place, and you took the bullet train. I
8 would like to ask you about your childhood feelings about
9 trains. What did trains mean to you before December 18,
10 2017?

11 A. I loved trains. I loved riding on trains. I loved
12 watching trains. I thought they were very cool.

13 Q. Daniel shared with us a little while ago one of the
14 things -- I think he said that one of the things on your
15 bucket list -- I don't know if it was his bucket list --
16 was to hop a train, ride trains?

17 A. Yes. I wanted to be a hobo briefly, ride a train,
18 yes.

19 Q. I'm not sure if I heard this right. I think he said
20 he never did, but you did at one point. Did you ever hop
21 a train or was that just a fantasy?

22 A. Me and my friends, we were down by the train tracks,
23 and we were -- you know, we did briefly touch a train and
24 everything. But it was not like an adventure like that.
25 I don't know what he said.

1 Q. Up until the accident, you had a love affair with
2 trains?

3 A. Yeah, I thought they were very cool.

4 Q. Did you trust that Amtrak was going to give you a
5 safe ride?

6 MR. BONVENTRE: Objection, your Honor.

7 THE COURT: Overruled.

8 THE WITNESS: I had -- I really enjoyed riding
9 Amtrak. I was going to the University of Washington, and
10 it was very easy for my family to pick me up in Vancouver.
11 I always, whenever I could, took the train down and back,
12 because I loved looking out the window watching the
13 scenery. I preferred it much more than to a bus. Yes, I
14 had complete faith in Amtrak. I had even gone from
15 Seattle down to San Francisco with a group of friends
16 before. It was a lot of fun. I really trusted them. I
17 wanted to travel all over America, honestly, on Amtrak.

18 BY MR. PETRU:

19 Q. There have been reports from Dr. Scovel, Dr. Spohr,
20 Dr. Crossen about difficulties that you have now with
21 public transportation, not just trains, but trains, buses,
22 planes. What happens when you have to take public
23 transportation now?

24 A. I am very easily startled by any shaking or if it
25 hits a pothole on a bus, that scares me. If I took the

1 Link in Seattle going into the tunnel into the dark,
2 hearing the rattling noises, this would terrify me. I
3 would have to listen to music. So I avoided it. If I
4 take a plane, I am frightened that if an accident happened
5 before, it could happen again. So transportation changed
6 a lot for me after the accident.

7 Q. Do you trust any transportation now?

8 A. I think the safest I feel is if I am in a car.
9 Besides that, no, I feel very conscious of the very
10 possibility of an accident in any other transportation.

11 Q. Because you know the reaction you have when you are
12 on a bus, a train, or a plane, how do you prepare yourself
13 to do it when you feel you have to?

14 A. I always listen to music, because I don't want to
15 hear anything that might scare me. I usually sit very far
16 away from other people, because I am prone to crying, and
17 it is very embarrassing.

18 Q. But you do it, you use public transportation? Why do
19 you do it if you have that kind of reaction?

20 A. When I was studying in Seattle, there is really no
21 way around taking the bus. I didn't have a car. So this
22 was my only means of transportation really. And then when
23 I was studying in France, I didn't know that the train
24 system was really the only way to get around, but that was
25 the case. So if I wanted to go places, that was how I got

1 around.

2 Q. Dr. Crossen spoke with us yesterday about talking to
3 you during the time that he was counseling you on helping
4 you work to get on the trains. Do you remember that?

5 A. Yes.

6 Q. Was that helpful?

7 A. Sometimes -- it has always been a struggle since
8 then.

9 Q. Still a struggle now?

10 A. Yes.

11 Q. You came here from Egypt. You live in Egypt now,
12 right?

13 A. Yes.

14 Q. And in order to do that, you needed to take a plane
15 to come home, to come here?

16 A. Um-hum.

17 Q. Was that difficult?

18 A. Yes. I cried most of the way.

19 Q. When you started at the University of Washington,
20 initially, did you have an idea in mind as to what you
21 wanted to study and what you wanted to be?

22 A. I rather foolishly planned on becoming a
23 neuroscientist. But my first quarter at UW I realized
24 this was something I was really not prepared for. So by
25 my second quarter, I experimented, I took classes that I

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1 thought I might be interested in. And I was lucky to have
2 kind of two international roommates at the time. I met a
3 lot of people from abroad. And it kind of sparked an
4 interest in learning about the Middle East, about Europe,
5 other countries, which is kind of how I fell into my
6 majors.

7 Q. Were those the students who your mother just shared
8 with us you brought a couple of foreign students down to
9 Ridgefield down to the family spread?

10 A. Yes, for Thanksgiving. I wanted them to experience
11 an American Thanksgiving.

12 Q. As a consequence of getting to know these folks and
13 deciding that neuroscience and you probably weren't the
14 best fit, what did you decide you wanted to study?

15 A. I knew I was very passionate about learning Arabic,
16 and that led me to kind of specialize in international
17 studies of the Middle East, as well as Middle Eastern
18 languages and civilizations, as well as a political
19 science major.

20 Q. Where did your passion or desire to learn Arabic come
21 from?

22 A. When I first came to the UW, I wanted to make a
23 friend, and so I enrolled in a language exchange program.
24 I thought I would be paired with someone from France or
25 Norway, and they paired me with a girl from Saudi Arabia.

1 She was very sweet. She wanted to teach me Arabic. The
2 more she taught me, the more I wanted to learn the
3 language. It kind of became a goal for me that this was
4 something I really wanted to learn.

5 Q. When you first got to UW before the crash, were you
6 able to makes friends easily?

7 A. Yes. Can you repeat the question.

8 Q. Sure. Before the crash, at UW, were you able to make
9 friends easily?

10 A. Yes, I would say so.

11 Q. In high school you had a good circle of friends.
12 Your mom talked about them. I know you weren't here, but
13 it was a small school, 40 in the middle school or high
14 school, and there was a core group who were your buds?

15 A. Yeah, I had some very good friends.

16 Q. Let me ask you about that now. Unfortunately, you
17 are not close to them anymore, are you?

18 A. No.

19 Q. What happens to you, Emily? Why have you lost
20 contact with these people who were so close to you back
21 then?

22 A. I think I'm much more sensitive and irritable about
23 certain things. And when a problem arises, when someone
24 does something and -- I kind of have an outburst or I
25 don't how to handle it, they say something hurtful, my

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1 first reaction really is to run away. So I usually cut
2 off contact with people, and I leave it like that.

3 Q. Is that why you are in Egypt?

4 A. Yes.

5 Q. You are obviously very bright. You have been dealing
6 with this for four and a half years. You understand -- do
7 you understand what has happened to your brain?

8 A. I am not a neuroscientist, so no. But I do recognize
9 that I have changed in a lot of ways.

10 Q. Have you tried -- do you try to stop the impulses or
11 try to stop the behaviors or try to stop the thoughts when
12 they flood?

13 A. I do.

14 Q. How do you do that? How do you try?

15 A. The best way that I can, because if I get angry it is
16 just kind of -- it's like you get a ball rolling, there is
17 no stopping it, it just keeps building and building. I
18 try to minimize my exposure to situations where I could
19 get mad, where I could, you know, get very irritated like
20 that, very stressed out.

21 Q. Looking back at the last four and a half years, have
22 you cut yourself off from opportunities and activities
23 that you might otherwise do for fear of alienating people
24 or not controlling yourself?

25 A. Yes.

1 Q. What sorts of things would you say you have given up
2 for that reason?

3 A. I am not very good at social activities. I have not
4 gone to a lot of parties, or even when I was working I
5 was, you know, supposed to go to a lot of social events.
6 I would briefly make a one-minute appearance, and then run
7 away, because I was very afraid I might start saying
8 something and not be able to stop myself from saying
9 something that would cause trouble for other people, or I
10 would get into an argument with someone, and it would just
11 blow up. I do my best to kind of keep to myself when it
12 comes to things like that.

13 Q. Still now?

14 A. Yes.

15 Q. I need to talk a little bit about December 18th,
16 2017. What do you remember -- what do you first remember
17 about that early morning?

18 A. I remember I think we were running late, and so we --

19 Q. We? You and Hanna?

20 A. Yes. Hanna was my friend from high school. We both
21 lived in the same area. We were going home for the
22 Christmas holidays, and I had gotten us the earliest
23 tickets down to Vancouver that I could find. When we
24 arrived at the station, I was really surprised because
25 there were people in suits and business attire, and they

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1 were handing out lanyards. That's when I realized it was
2 the first run on this line, and I was very excited. I
3 thought it was very cool. I was going to keep my lanyard
4 and everything.

5 Q. Did you notice anything unusual besides getting a
6 lanyard? Was it a badge or a lanyard or a badge and a
7 lanyard?

8 A. Like a plastic card with a tie around it, you could
9 wear it around your neck.

10 Q. So you got the plastic card with the tie around your
11 neck. There were people in suits. Did you notice
12 anything unusual about that morning?

13 A. It was very early. I didn't know they had lines that
14 ran that early, but I was thankful because I thought we
15 could get in early in the morning to surprise our family.
16 There were quite a few people as well.

17 Q. Were you excited about going home for Christmas?

18 A. Yes, I was looking forward to seeing my family.

19 Q. What was your relationship with Christmas before
20 then, with the month of December before that?

21 A. I really like making cookies, getting presents for
22 people, seeing the Christmas tree, going to the
23 Nutcracker, all that traditional stuff people do.

24 Q. At some point, did a film crew or a camera crew get
25 on the train you were on?

1 A. Yes. We were sitting in a train car, and I realized
2 that there was some man, you know, doing a newscast with
3 his cameraman in the aisle. I didn't hear what he was
4 saying, but I was like, okay, so the news is capturing
5 this moment.

6 Q. Do you remember anything about the run -- you got on
7 at King Street station in Seattle, right?

8 A. Yes.

9 Q. Do you remember anything about the run from King
10 Street down to Tacoma, besides it was early?

11 A. I actually made Hanna switch seats with me because I
12 wanted to look out the window. I was watching the sun
13 come up. We were talking about Archie comics or
14 something.

15 Q. Am I wrong, or did one of you or both of you go to a
16 play the night before?

17 A. Yes, I got us tickets to a play called Howl's Moving
18 Castle. I was very excited to see that play.

19 Q. Is that something you enjoyed doing, going to plays,
20 seeing music, live events?

21 A. Yeah, I really loved concerts, plays, things like
22 that.

23 Q. And you organized going to the play with Hanna?

24 A. Yes. Yeah, I did.

25 Q. Have you gone to plays or concerts since the

1 accident?

2 A. I think I briefly went to one or two concerts, but
3 the noise and the lights were very painful for me. I
4 didn't enjoy the experience at all. So I don't go to
5 concerts anymore. I usually don't have the -- I don't
6 like to go to plays alone, so I usually don't have the
7 occasion to go there.

8 Q. So you are on the train with Hanna, you made her
9 switch seats with you so you could look out the window,
10 which is what you like to do, you got to Tacoma. What do
11 you remember after leaving the Tacoma station?

12 A. I was looking at my phone. I was listening to some
13 music, and I think Hanna -- she nudged me, and I looked up
14 and I noticed that the train car and the rubber dividers,
15 they were violently shaking. And I didn't know what was
16 going on. The next thing I remember was something
17 metallic kind of just headed at me. That was it.

18 When I woke up, it was pitch black. I couldn't see
19 anything at all. And I heard people around me screaming
20 and crying. I was just in the dark. I tried to move my
21 legs. I tried to move them, but I couldn't. And I
22 thought that my legs had been cut off. I heard someone
23 saying the train had been derailed. So I thought that I
24 didn't have any legs and I wouldn't be able to walk or run
25 or swim or anything again.

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1 But then I was able to move my foot a little, so I
2 knew I thought I had legs, or at least I thought I still
3 had the feeling of them. And then I knew -- I thought,
4 where is Hanna? And I knew she had been sitting beside
5 me. So I thought -- I thought she had died. I thought
6 that was her body pinning me down.

7 I was trying to get up, but I couldn't. Every time I
8 moved, dirt kept falling in my mouth and my eyes and I
9 couldn't see anything. And I was starting to get very
10 hysterical. I was freaking out. I thought I was dying.
11 I heard someone saying "EMTs are coming." But I just
12 couldn't calm down. I just couldn't -- it was like
13 something snapped inside of me. I think I was saying the
14 Lord's prayer over and over and over again until someone
15 started to speak to me.

16 I couldn't see anything at all, but I heard this man
17 saying something. He was saying he had been there to take
18 photos of the train, and he asked what my name was. I
19 told him, "I am Emily." He said he was Kevin. I think he
20 moved something, and I saw this little portal of light.
21 And he put -- he held me -- he held my hand. And he told
22 me he had a daughter, and he was trying to calm me down,
23 but I was just very hysterical. You know, he said, "The
24 EMTs are coming. It's going to be okay." I kept shouting
25 the Lord's prayer over and over again until someone, it

1 must have been Kevin, kind of got in the dirt beside me
2 and tried to push whatever was pinning me down. And I
3 tried to pull myself out, but I couldn't. I couldn't move
4 my shoulder. I was at an angle. I had to wiggle my way
5 out. I felt my shoes fall off my feet. I know they led
6 me over to the EMT tent, but I couldn't see anything. I
7 could only see the ground.

8 Q. Is what you just shared with us now an image that
9 comes back to you with any frequency?

10 A. Yes.

11 Q. Can you stop it?

12 A. No.

13 Q. How frequent does it happen?

14 A. If I'm in Cairo, there is a very old Metro system.
15 And if it goes in the tunnel and the car is shaking, I
16 just keep thinking about it, being in the dark, and people
17 screaming, and not being able to move. So it comes back
18 frequently if I am riding transportation.

19 Q. Do you dream about it?

20 A. I dream about trains. I dream about violent
21 accidents, people getting killed or injured or hurting
22 themselves.

23 Q. Does that happen now?

24 A. It has been happening all week.

25 Q. Besides this week, I know that the pressure and the

1 stress of having to try this case and be here is
2 overwhelming, but before this week, last month, last year,
3 in the last four and a half years, are those dreams that
4 come to you with any regularity or frequency?

5 A. I would say about weekly.

6 THE COURT: Would this be a good place to take a
7 break?

8 MR. PETRU: Yes, your Honor.

9 THE COURT: Fifteen minutes. Please do not
10 discuss the case.

11 (Recessed.)

12 THE COURT: Bring in the jury.

13 (The following occurred in the presence of the jury.)

14 THE COURT: All right. Everyone, please be
15 seated. You may resume, Mr. Petru.

16 MR. PETRU: Thank you, your Honor.

17 BY MR. PETRU:

18 Q. Emily, we left you, you got extricated from where you
19 were pinned in the dirt, and were you taken to a triage
20 area. What do you remember from that portion of the day?

21 A. I remember I talked to several people, but I couldn't
22 see their faces. I think it felt like I kept -- I was
23 looking at the ground. I only remember seeing the ground.
24 I had asked Kevin, the man who found me, to call my
25 mother.

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1 Q. Excuse me for interrupting. How did you find Kevin
2 again? How did he find you?

3 A. I thought he brought me to the triage area, but maybe
4 he left and came back. I talked to a sheriff at some
5 point and I think someone else.

6 Q. But you remember talking to Kevin in the triage area?

7 A. Yes.

8 Q. What did you talk to Kevin about?

9 A. I asked if he could call my mother. I think people
10 were saying that we would all be brought to different
11 hospitals, and I wanted him to call her and tell her what
12 had happened and where I was going.

13 Q. Do you remember that -- let me see if I can refresh
14 your recollection, because you did share some of this in
15 your deposition. Who was going to pick you up at the
16 train station?

17 A. My mom, or my family, both of them.

18 Q. You don't remember forgetting your dad's cellphone
19 and calling the house?

20 A. I don't know anyone's cell phone number. I know my
21 home phone number.

22 Q. Do you remember the call with your mother on the
23 phone? Do you remember that at all or just the fact that
24 it happened?

25 A. I didn't recall that I ever spoke to her on the

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1 phone.

2 Q. What happened after the triage area? What did they
3 do with you next?

4 A. I was given a shot to kind of sedate me, and they put
5 me on some sort of board to lock in my neck so that it
6 wouldn't be jostled around in case I had a neck injury.

7 The next thing I remember, I woke up in the hospital
8 and they were cutting off my clothes to look for injuries.

9 Q. What, if anything, do you remember about your three
10 days in the hospital?

11 A. I remember that I was -- the first day my mother was
12 on the way, and they wanted to clean me up before my
13 mother came and saw me. They said I looked like
14 Freddy Krueger, so they were washing my face and trying to
15 get the blood off of it. I hadn't seen myself at all, so
16 I didn't know how I looked.

17 My mom came, and she was in the room with me, but I
18 couldn't really move, or I was supposed to call the nurses
19 to help me to the bathroom or move or anything like that.
20 I was in a lot of pain. And I was kind of going in and
21 out of consciousness. Doctors would come in and kind of
22 look at me and check things, and then leave.

23 At one point, I think I was there -- yeah, three
24 days. At one point, I think I told my mother I wanted to
25 leave, I wanted to go. And she was saying, no, I had to

1 stay to make sure that I was okay. And I was becoming
2 very, very upset, and very upset, and the nurse came in
3 and told my mother that she had to go because I was
4 getting -- it was dangerous for me to become so upset. My
5 heart or something.

6 Q. Do you have any idea why you got so upset?

7 A. I think I hated to feel so weak.

8 Q. When you were released, you went home. Tell us about
9 the two weeks or so you were at home?

10 A. For a while, I kept waking up very early in the
11 morning, around 6:00 in the morning or so. I didn't know
12 why. I was pretty hideous. I had two black eyes, I had a
13 cut into my forehead and another cut here. So those
14 required stitches. And I had a chipped tooth. And my
15 shoulder -- my collarbone had been broken, so I was in a
16 sling. So I wasn't really seeing anybody.

17 Q. Did you have any nausea or headaches?

18 A. Yes. I just kind of laid in bed for the majority of
19 the time. I had some severe headaches. I didn't really
20 want to go out into the light. I just stayed in my room.
21 Not much of a holiday, honestly.

22 Q. Do you remember seeing Dr. Spohr?

23 A. Yes, I did go see Dr. Spohr.

24 Q. Do you remember a discussion with Dr. Spohr about
25 whether or not you should go back to school?

1 A. Yes. She warned me that she had had patients before
2 who had this type of injury, kind of a concussion, and
3 that they found it extremely difficult to go back to
4 school to study, to concentrate, to look at screens, all
5 of these things. She thought it would be best if I took
6 time off from school to recover, because she was worried
7 my GPA would fall if I went back.

8 Q. Did your mother or anybody else express the same
9 thought, that you should probably take time off and
10 recuperate?

11 A. Yes, my mother definitely felt that way. I think my
12 father did, as well. Most of my family agreed with
13 Dr. Spohr, that I should stay there and try to get better.

14 Q. But you wanted to go back, right?

15 A. I did. I had a feeling that if I took this time off,
16 I would never go back to college, I would never try to do
17 anything again. I kind of felt like I needed to really
18 push myself to move.

19 Q. So you did push yourself?

20 A. I did.

21 Q. When you got back up to school, with the broken
22 clavicle, you had your arm in a sling, were Dr. Spohr's
23 words borne out? Was it hard?

24 A. It was extremely difficult.

25 Q. Share with the jury the kind of difficulties you

1 encountered in January and February of 2018 when you went
2 back to school?

3 A. I was very alone, and every class I went to, because
4 it was winter, I would have to, you know, try to take off
5 my backpack and then take off my jacket, you know, and get
6 all my books out. And this was a whole process. At the
7 end of every class, I had to do the same thing over and
8 over again. I had to ride the bus. And I was very scared
9 to do that. And it was often very crowded, so I would be
10 standing there trying to hold the bar with my arm in a
11 sling. It was very irritating on my collarbone to have
12 any sort of backpack, anything putting pressure on it at
13 all. But how do you go to class if you -- if that's the
14 case. You have to bring your books with you.

15 I was trying to study Arabic. It was my second
16 quarter of Arabic at the time. And I was very worried
17 that it would not go well. I was very worried about what
18 Dr. Spohr had said. So I was -- I applied for a
19 disability program at UW. It encompasses a wide range of
20 disabilities, but including concussions. So I asked her
21 for a letter so that I would be able to have more time to
22 take my tests, complete assignments. I routinely went to
23 my teacher at the time to get extra help outside of class
24 so that I could make up for my -- I was struggling with
25 memorizing things.

1 I had to write the letters out with my hand so that I
2 could kind of build muscle memory, because just seeing the
3 letters, the words, wasn't enough. In general, all my
4 classes kind of required a computer screen, so I had to
5 take breaks because of continual headaches.

6 Q. It was hard?

7 A. Yes.

8 Q. But you got through it?

9 A. Yes, I did.

10 Q. And academically, in fact, all the way through
11 academically you did well, didn't you?

12 A. This was I think because Dr. Spohr had given me a
13 prescription for Concerta, which kind of helped me focus.
14 Despite all the distractions and the pain, I was able to
15 really concentrate when I needed to. I think if I had not
16 had that prescription, the quarter would have gone very
17 differently.

18 Q. Did you like having to take the medication?

19 A. No, I hate medication.

20 Q. You hate medication?

21 A. I hate taking pills. I am kind of stubborn about
22 that.

23 Q. How many semesters did you utilize the dispensation,
24 that is the disability dispensation to get additional time
25 for tests and assignments?

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1 A. I believe it was for two quarters. And the next
2 year, I wasn't at the school itself.

3 Q. So in the winter of 2018, the spring of 2018, you got
4 the dispensation, and then in the summer you were doing
5 some fieldwork, correct?

6 A. Yes. Correct.

7 Q. So you didn't need it?

8 A. No, I did not.

9 Q. In fact, was there any other time after the spring
10 and -- winter and spring quarters of 2018 that you were
11 actually back on campus prior to COVID?

12 A. There was the fall quarter of 2019, I was at the UW
13 campus.

14 Q. When you were back at the UW campus in the fall of
15 2019, how did it go? Did you get special dispensation at
16 that time? Did you still have it?

17 A. No, I did not. But I had a very, very difficult
18 quarter. I quickly realized things were not going well at
19 all. And I sought out help from various people, like from
20 health practitioners, to try to save my -- me from what
21 was going on at the time.

22 Q. Was there a program at the UW that you were able to
23 utilize to help get through it?

24 A. No. I didn't apply for the special program, because
25 by that point, by the time I realized how badly everything

1 was going, it was pretty far into the quarter. It was
2 pretty much too late to go and reapply. It didn't come to
3 mind.

4 Q. In one of her reports, Dr. Spohr, I believe it was,
5 indicated that you lost a semester at some point, you had
6 to drop out. Is that an accurate report? Did she get
7 that right?

8 A. I think technically no, on my transcript that is not
9 what it shows. What happened was, when I came back from
10 my exchange in France, where I went thinking I was going
11 to improve my Arabic studies and, you know, going to Egypt
12 where I thought I would really be able to improve a lot
13 when it came to Arabic, when I came back that quarter I
14 was not able to place in the level I should have been at.

15 I took this very hard. I felt like a failure. And
16 so I had to drop out of my Arabic class, and I didn't take
17 any Arabic for that full year.

18 Q. Did you talk to Dr. Spohr about that? Is that what
19 you explained to her?

20 A. I believe so. It was my annual exam. So I think I
21 was just telling her how the year had gone for me since my
22 last visit, which I believe was immediately after I had
23 come back.

24 Q. Speaking of Arabic, it was implied here by others
25 that you are proficient in Arabic. Are you proficient in

1 Arabic?

2 A. Is a three-year-old proficient? I am not proficient
3 in Arabic.

4 Q. Have you found to your expectations that your ability
5 to learn Arabic stayed as it was prior to the crash, or
6 did you have some difficulties afterwards?

7 A. I believe I have had a lot of difficulties with
8 Arabic. To be sure, it is a difficult language, but I
9 have not been able to memorize things the way that I would
10 hope. Things don't stick with me the way I would like. I
11 have honestly not spoken Arabic, I think, since November.
12 I haven't stayed in any classes, which was my intention.
13 But I haven't been able -- mostly given up on it at this
14 point.

15 Q. Even though you are living in Cairo, you are not
16 speaking Arabic?

17 A. I do not speak it at all.

18 Q. Staying in the academic realm, share with the jury,
19 if you will, what your own expectations are for yourself,
20 or what they were for you as a student? What is the
21 Emily Torjusen standard of academics?

22 A. My family raised me to get very good grades, to do
23 the best I possibly could. I feel very lucky to have been
24 able to go to the University of Washington. And I wanted
25 to do my best in every single class. So when it came to

1 an assignment, when it came to a test, of course I want
2 the best grade I can get. I don't fool myself into
3 thinking it is 100 percent every time, but I want to get
4 as close to that as I can.

5 For me, if I know that I have done well academically,
6 then I can feel satisfied. But in large part, I never
7 feel satisfied with my schoolwork, with any work that I
8 do.

9 Q. After the crash, did you have to spend more time
10 cutting out -- spend more time on your assignments, on
11 your writing, on your studying than previously had been
12 the norm for you?

13 A. I had huge struggles with concentration since the
14 crash. It is a constant annoyance, because I will sit
15 down, and I have an assignment I know I have to do, I have
16 to do, I want to do it, I am ready to do it, but five
17 minutes into working on it, I am cleaning my room, I am
18 making dinner, I am putting my clothes away, anything. I
19 just jump from one thing to another thing to another
20 thing. Sometimes I jump from one assignment to another
21 assignment, so I end up doing pieces of each, but never
22 fully concentrating on one at a time. So it takes a long
23 time for me to get something done, especially when I was
24 in school taking multiple classes.

25 Q. Did it affect your sleep?

1 A. Yes. I had a lot of difficulties with my sleep,
2 especially when I came back in the fall quarter of 2019.
3 I would start falling a sleep when I was trying to work on
4 things, but then when it came time for me to actually go
5 to bed, I was lying awake paralyzed with the fear I was
6 going to fail and I didn't complete this. So I would try
7 to stay up and try to finish it. I was constantly sleep
8 deprived, but also unable to fully do the assignment. It
9 was a vicious cycle.

10 Q. Did it affect your ability to care for yourself in
11 terms of eating and exercise?

12 A. Yes. It has been very difficult to have, I guess,
13 one of those life-styles where you are able to have a
14 social life and care for your body and, you know, care for
15 your mind as well. I am kind of someone who over the
16 years has had to focus on work, focus on that, and there
17 is no room for much else. Of course, I enjoy walking in
18 the sunshine and things like this. In order to get the
19 things I want done, to prioritize the things that are most
20 important in my life, I have to focus on them as much as I
21 can.

22 Q. How much of a struggle is it for you on a daily
23 basis?

24 A. On a daily basis, I would say -- I am never
25 satisfied. I will -- I get to work and I will stay there

1 late into the evening, keep working on something even if
2 it is over the deadline. If I don't feel like it is
3 enough, if I don't feel like I have said everything that
4 needs to be said, I have to keep working on it. It is not
5 finished. I am never very satisfied with the work that I
6 do.

7 Q. Since you mentioned work, I am going to follow where
8 you are going rather than follow my outline. What is your
9 work now?

10 A. Technically speaking, I am the CEO of a small
11 start-up in Egypt, which kind of deals with the
12 publications about businesses in the United States. All
13 of our work is done in English. I manage four people.
14 And I'm not a very good manager, at that. I am really
15 just a CEO in title, because I am an American, and the
16 work we do is about the U.S. I am a native English
17 speaker. So in terms of qualities, I am kind of the best
18 that they have at this very small organization.

19 Q. You say you have four people who report to you. What
20 do those people do? What are their jobs?

21 A. We have one writer. We have one video editor. We
22 have one social media person. And we have a YouTube host.

23 Q. What does the writer do? What are they supposed to
24 be doing?

25 A. What they are supposed to do is research a company

1 and create a comprehensive article using good English
2 outlining the positives and negatives of that company.
3 Yeah, that's it.

4 Q. And what is your relationship to their work?

5 A. More often than -- almost all the time, I am not
6 satisfied with their work. This is a constant issue. I
7 cannot -- I have tried to teach them how to do research,
8 how to improve their English, how to write more formally.
9 This has never really succeeded. I almost always rewrite
10 their work entirely because I want it done the right way.
11 It has to be done the right way, and people are unable to
12 do that. And this has caused a lot of friction in our
13 organization.

14 Q. Has there been turnover?

15 A. A lot of turnover.

16 Q. Are you responsible for that?

17 A. I have fired many people.

18 Q. Are you concerned about being able to keep your job?

19 A. No, because, quite frankly, I am the best they have.
20 At a different organization, this would not be the case.
21 But in Egypt, this is --

22 Q. Your mother shared with us, and you touched upon it
23 earlier, outbursts, not being able to control frustration
24 or anger. Before the crash, did you have any problems
25 controlling what you said to friends, to professors, to

1 parents, to strangers? Were you able to comport yourself
2 appropriately in public?

3 A. I would say so. I was really quite shy. I barely
4 ever spoke to people.

5 Q. How frequently now do you find yourself in a
6 situation where you feel that uncontrollable reaction,
7 where you know you are going to go off?

8 A. I almost always say more than I intend, and I leave
9 berating myself because I feel like a fool, I can't
10 control what I'm saying. That's not -- that's not good as
11 an adult.

12 When it comes to outbursts of anger, I get very -- it
13 starts as something -- it could be something small, but
14 then I just go from zero to 100 straight away, and I am
15 just screaming at another person for no good reason. I
16 can't really stop myself once I get started. It just
17 takes over.

18 Q. I understand that, and that has been a pattern that
19 you have lived with, you see, you know is there, you try
20 to avoid situations or keep it under control. My question
21 is: How often does it happen in the last -- say on a
22 monthly basis, weekly basis, where one of those episodes
23 happens in your life?

24 A. An extreme outburst, like screaming at someone,
25 probably twice a month, or at least once a month. But

1 something where I just out of nowhere start snapping at
2 people, getting very angry at them, very irritated, very
3 short-tempered, demanding things from them, that probably
4 is more on a weekly basis in my personal life and my work
5 life.

6 Q. Speaking of your personal life, you currently have a
7 partner?

8 A. Um-hum.

9 Q. And you are living with him, correct?

10 A. Yes.

11 Q. Do you snap at him and have those kinds of issues
12 with him?

13 A. All the time. He has said to me that he is afraid to
14 say things to me because of how I am going to react.

15 Q. How does that make you feel?

16 A. I feel terrible.

17 Q. He obviously understands -- I don't know if it is
18 obvious. Have you shared with him what has happened to
19 you about the crash, about the changes, about the areas
20 that you can't control?

21 A. Yes. But I don't think, you know, he fully -- he
22 doesn't fully get it. He understands PTSD, he has seen
23 people die in his own life, so this is something he can
24 understand the trauma, a terrible accident. But when it
25 comes to our disagreements, it's very difficult for him to

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1 forgive me.

2 Q. Based on your reports of problems that you were
3 having in January and February, into March of 2018, your
4 mother arranged to have you evaluated neuropsychologically
5 with Dr. Scovel. Did you understand why she wanted you to
6 be evaluated? Did you understand it then?

7 A. Did I understand it then? I understood that -- to
8 me, I was acting very strange, even for me I felt very
9 different as a person. I was speaking uncontrollably. I
10 was having very strange reactions to things, crying very
11 often at things I never would have, not really being able
12 to have a nice medium emotion. So I figured it was
13 something like this, or worrying about the effects of
14 PTSD, being scared on the buses, et cetera, anxiety.

15 Q. And you were tested by her in 2018, and again in
16 2020. Did you give your maximal effort on the testing
17 that she administered directly and through her assistant?

18 A. Yes.

19 Q. One of the issues that has been noted is the anxiety
20 about decisions, inability to decide things, choices. How
21 has that manifested with you? Can you give us an example
22 on simple decisions and how hard they are sometimes?

23 A. Yes. Grocery shopping has always been a weird
24 struggle since the accident. I will go into a grocery
25 store, and I will have planned out everything I want to

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1 get. But the moment I'm in the aisles, I am staring at
2 all these different types of cheese, all these different
3 kinds of cereals, and I can't make a decision. I have no
4 idea what to get. I am thinking about the price, the
5 quality. It drives me nuts. So I will stand in an aisle
6 for minutes unable to decide something. And I have left
7 grocery stores often without getting anything, because at
8 this point it is just what do I even do. So usually I
9 will just eat the same thing over and over. I am not very
10 picky about food. It's fine. I can make the same thing
11 again and again.

12 Q. Before the accident when you went -- you lived in an
13 apartment with Jocelyn, correct?

14 A. Yes.

15 Q. We don't have to go into it, one of your friends who
16 is not part of your circle anymore. When you and she
17 lived together before the accident, did you go grocery
18 shopping?

19 A. Yeah, we would go grocery shopping together.

20 Q. Would you be adventuresome and try different things?

21 A. Yeah, we did.

22 Q. Was that ever a problem for you to go to a grocery
23 store before?

24 A. No.

25 Q. How about other shopping, clothes, books, anything

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1 else?

2 A. No, I never had difficulty deciding what I wanted.

3 Q. In addition to groceries, do you have difficulties
4 with clothes or books or any other kind of shopping where
5 a decision has to be made?

6 A. In general, I don't like shopping because it requires
7 a lot of decision-making. The same thing with eating out,
8 I don't like to go to a restaurant, because I struggle to
9 make a decision about what is the right thing to get.
10 Hopefully, I will order the same thing as someone else or
11 ask someone to order for me. Sometimes, I will ask the
12 waiter, you know, what is the best thing, and whatever
13 they say it is, I will get that instead.

14 Q. In the last four and a half years, you have had
15 therapies -- aborted therapies with Elizabeth -- I keep
16 doing that. I don't know why. Elizabeth Scovel
17 probably -- with Emily Smith, and then with Dr. Crossen,
18 John Crossen, and then with a Rita Costelich, I think her
19 name is. And then with Dr. Crossen, you did an evaluation
20 again, and actually with Dr. Johns. What happens to you
21 when you're in therapy, when you have found somebody and
22 you start seeing them? What happens to those
23 relationships? Can you share with us why it doesn't last
24 very long?

25 A. I am pretty hesitant to see any medical professional,

1 because I hate telling them what happened. They have very
2 strange reactions to saying, oh, I was in the train
3 accident. So when I try to seek out some sort of therapy,
4 some sort of help, I find it very difficult to tell them
5 what I am going through, and their reaction is usually not
6 what I hope or what I anticipate, or somehow I always have
7 conflict with it.

8 The more I talk about the things that are going in my
9 life, the more I am thinking about how bad, how annoying
10 these things are, the bad memories associated with them,
11 all the things that are going wrong. So it is much easier
12 for me to just not talk to someone about it.

13 When I really hit rock bottom, where I really feel
14 like I can't -- I need someone's help, then I seek someone
15 out, and the cycle begins again. I just can't make it
16 past this. So I will always end up leaving.

17 Q. I want to go back just a little bit to your work.
18 How long -- what is the name of the company you work for
19 in Cairo?

20 A. It's called Geek Labs.

21 Q. Geek Labs?

22 A. Yes.

23 Q. How long have you worked for Geek Labs?

24 A. I first started there halfway through July as a
25 content writer.

1 Q. Actually, your partner is associated with Geek Labs,
2 as well, right?

3 A. Yes.

4 Q. Does that make it difficult when you have
5 disagreements or fights and are working together?

6 A. Yes, it does.

7 Q. Have you had any other work while you have been
8 working at Geek Labs?

9 A. Yes. When I first arrived in Cairo, I was initially
10 teaching at sort of an English language center in a
11 different area of the city.

12 Q. What happened with that employment?

13 A. I was exhausting myself. I was really unable to keep
14 up with both jobs with the work involved in both, and I
15 didn't have any time to relax at all. And it was really
16 affecting my work at Geek Labs, which was a full-time job
17 as opposed to the part-time job with the language center.
18 So my boss there told me I really should quit. And I
19 preferred my job at Geek Labs. I really enjoyed my work
20 there. And I decided, okay, fine, I will. But I was a
21 coward. I am really bad at telling people no. I didn't
22 know how to say it. I told him my mother had been in an
23 accident and I needed to go back to the U.S. I said this
24 to him in an email. He wanted me to continue doing some
25 classes until I left, but I knew if I went in they would

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1 know that my mother wasn't in an accident. So I felt very
2 ashamed. I just didn't go, I didn't reply or anything.

3 Q. And then that guy started stalking you?

4 A. Yes. He showed up at my workplace, Geek Labs, which
5 is very far away from his center. He demanded back some
6 of the equipment. And that was fine. I delivered it to
7 him. Then he contacted my boss at Geek Labs and sent him
8 a long message about all the bad things I had done. He
9 called him, and they had a long conversation. My boss at
10 Geek Labs explained, okay, what she did is definitely
11 wrong, but don't you think this is too much at this point.
12 And then he made a tweet -- a long thread explaining what
13 happened, and tagged multiple people. I think he found
14 them on my LinkedIn or something. I only saw it because
15 someone I used to know sent me an email saying this person
16 is saying this stuff, I wouldn't worry about it.

17 I didn't know what to do. I was very scared. I was
18 like why? And he continued to take it further and
19 further. He started really seeing -- he released the
20 address that my family lives at, the name of my mother, my
21 sister. He tried to contact my mother, tagged her or
22 something on Facebook. It was getting very extreme. In
23 the end, my boss at Geek Labs confronted him and it was
24 stopped.

25 Q. All because you couldn't find a graceful way to tell

1 the guy you can't do the work any more at the language
2 school, so you fibbed?

3 A. I did. And it was wrong.

4 Q. Do you know why you did it?

5 A. I'm very bad at saying -- I don't know. I was
6 ashamed, or I just couldn't face him, I guess.

7 Q. I want to go back a little bit to your academic
8 track. You went back to UW in January for the winter
9 quarter of 2018, spring quarter of 2018. What did you do
10 next academically?

11 A. I'm sorry. Can you repeat that?

12 Q. What did you do next academically?

13 A. After the spring quarter of 2018?

14 Q. Yes.

15 A. Well, winter -- spring quarter of 2018. Well, I did
16 go home. I spent I think a few months at home with my
17 family until I left in August. That didn't go very well.
18 I had some serious arguments with most of my family
19 members.

20 Q. In August, you went to study in Monton, I think it is
21 called?

22 A. Yeah, Monton, France.

23 Q. M-O-N-T-O-N?

24 A. Um-hum.

25 Q. Why Monton? Did UW have an exchange program with

1 Monton or give you credit to go there?

2 A. They did. It was one of the recommended places. And
3 I was hoping to find a place that would help me improve --
4 like learn Arabic faster. That was really my goal. And
5 they don't really allow exchanges to the Middle East. But
6 this was a school that specialized in Middle Eastern
7 languages, politics of the Middle East. It seemed like a
8 very perfect fit considering what I was studying.

9 Q. And Monton is located in the very southeast of
10 France, correct?

11 A. Yes.

12 Q. How close is it to Italy?

13 A. It is a 30-minute walk to the border.

14 Q. Did you walk to Italy?

15 A. I did.

16 Q. It has been reported that you even went shopping in
17 Italy?

18 A. I bought my groceries there because they were
19 cheaper.

20 Q. Was that your shopping excursion to Italy?

21 A. Yes.

22 Q. How far is Monton from Monte Carlo?

23 A. Monaco is a two-hour walk along the beach. I took
24 that walk with -- you know, to enjoy the water.

25 Q. So when you had a chance to go for a walk along the

1 beach, that's where you walked?

2 A. Yes. I didn't do it all the time, but the only
3 Starbucks in the area was in Monaco, so I would go there
4 to get coffee.

5 Q. That is a great thing for somebody from the
6 University of Washington to advertise. Right next to
7 Italy and France to get some Starbucks.

8 A. Yes.

9 Q. I guess you can't take the Starbucks out of the girl.
10 You were in Monton in the fall quarter of 2018?

11 A. Yes.

12 Q. And then I think the history is that you applied for
13 an internship or some program in Cairo, correct?

14 A. I did.

15 Q. Tell us about that. First of all, let me go back.
16 Tell us about what it was like to be in Monton, and
17 whether or not any of the symptoms or problems that you
18 had been experiencing as a result of the crash went on the
19 plane with you, and you took them over to Europe with you?

20 A. I rather foolishly thought this would be a chance for
21 me to put it behind me and, you know, recover. But I was
22 very depressed. I had a lot of issues. I was living
23 alone and very isolated at the time. My workload was a
24 lot less, but I was still studying Arabic. I was still
25 very much struggling with it.

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1 I talked to Dr. Crossen about this a lot. It was
2 kind of my chief concern. I had come all the way there
3 just to get better, and I wasn't at all. I would ask for
4 a private one-on-one with my Arabic teachers. I would
5 just burst out crying uncontrollably. And I didn't know
6 why. I was -- it was very difficult. So it didn't really
7 go the way I had planned.

8 Q. This wasn't a vacation on the French Riviera, was it?

9 A. No.

10 Q. Tell us about the internship or the program in Cairo
11 then in the winter -- the end of the year of 2018.

12 A. Yes. Yes, during I guess it was the summer of 2019,
13 I went to a language school in Cairo. It's called Ahlan
14 Arabic Centre, and I had applied to be an intern there,
15 which basically meant you helped with a few administrative
16 tasks, and you got a discount on Arabic classes and they
17 would give you some housing for one month. So it was my
18 attempt to make up for the time I had lost, because the
19 school in France was not what I had hoped it would have
20 been in terms of Arabic. So I felt like I was at a
21 deficit and I wanted to make up for it. So I spent the
22 summer there interning with the school.

23 Q. I think we might have miscommunicated here.

24 A. I'm sorry.

25 Q. It's all right. I thought you were in Monton

1 starting in August of 2018, and then sometime while you
2 were still overseas during that period of time, you went
3 to Cairo for three weeks?

4 A. Yes, I did.

5 Q. A semester for a program?

6 A. Yes, I did. That's how I first heard about the
7 school. The school in France was kind of advertising a
8 winter educational trip to this language center for a
9 group of students to kind of take group classes together
10 at a discount. And I had never actually been to an
11 Arabic-speaking country. So I thought this would be a
12 good opportunity. So I went there and took three weeks of
13 classes with a group of students from the same university.

14 Q. Did you feel -- was part of your motivation for doing
15 that a sense that perhaps if you stayed overseas and
16 didn't come back, you might avoid some of the demons that
17 had been haunting you here?

18 MR. BONVENTRE: Objection. Leading.

19 THE COURT: Sustained.

20 BY MR. PETRU:

21 Q. Let me rephrase it. Was one of the reasons why you
22 stayed and went to Cairo then, to avoid coming back here?

23 A. In the summer of 2019?

24 Q. No, in --

25 A. In the winter?

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1 Q. The end of 2018, beginning of 2019, the first time
2 you went to Cairo.

3 A. Yes. I didn't want to come back. I felt like I had
4 left things on a very ugly note with my family, and things
5 were not going very well with my friends at that point.
6 So I felt like I really didn't have much to come back to
7 anyways.

8 Q. You went back to Monton and finished up in May
9 of 2019, and then rather than coming back, you went from
10 there to Egypt, correct?

11 A. Correct.

12 Q. And you were there until September?

13 A. Correct.

14 Q. And then finally in September of 2019, a year after
15 you left, you came back to Washington?

16 A. Yes.

17 Q. Did you have an anticipation or an expectation that
18 things might be different after you spent a year away in
19 terms of family, friends, interactions, behaviors?

20 A. I was looking forward to seeing my friends and my
21 family, but I was very conscious that if I was around them
22 too much, things would probably not go too well. When I
23 first came back, I only stayed with my family for two days
24 before I had to go to Seattle to start my classes. Yeah.

25 Q. That was the semester when you went back to Seattle

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1 to start your classes where you had difficulty in Arabic
2 and had to drop that class or that part of the class, not
3 the whole semester, correct?

4 MR. BONVENTRE: Objection. Leading.

5 THE COURT: Overruled.

6 THE WITNESS: Yes, that was the same quarter.

7 BY MR. PETRU:

8 Q. How did it go with your friends and family when you
9 were back in Seattle for the fall quarter of 2019?

10 A. I didn't speak much to my family. And initially,
11 things were okay. I had lost contact with Hanna at that
12 point. We had a very not good falling out.

13 Q. Let's go back to that. This is while you were still
14 in Europe, it was in December, I believe, 2018, and you
15 were in London, and it was the anniversary of the crash.

16 A. Yes.

17 Q. What happened? Hanna was the woman who was with you
18 on the train?

19 A. Yes.

20 Q. Was there, and you went to visit her in London?

21 A. Yes, I did.

22 Q. She was studying there. What happened?

23 A. I was pretty distraught or frazzled. I don't know
24 how to describe it. When I found her, I found her
25 immediately on December 18th, that's when I arrived in the

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1 UK. And I wanted to talk about the accident. She didn't.
2 She didn't want -- she didn't have much to say about it at
3 all. We were together for maybe one week in the UK before
4 I showed her where I was living in France. And then I
5 left her there actually to go to Egypt. We had planned it
6 all out. I thought the trip had gone well, but I had
7 heard from our mutual friend that she was kind of
8 describing me as crazy, that I had -- wouldn't stop
9 talking about the accident. She thought I should get over
10 it.

11 I was very hurt by that, because she had been there
12 with me. I kind of thought if anyone could understand, it
13 would have been her, but that wasn't the case. So I did
14 cut her off. I did not -- I blocked her on everything and
15 have not spoken to her since.

16 Q. The old adage, just get back on the horse or just
17 pick up your life or just forget about it and move on,
18 have people told you to do that?

19 A. I have heard many weird things people said, oh, well,
20 you will be stronger for it, or don't you wish there had
21 been a video camera in the train car with you during the
22 accident. I don't think they know what they are talking
23 about.

24 Q. Your experience is that it haunts you?

25 A. Yeah. It's very painful for me.

1 Q. We were talking about the fall quarter 2019 when you
2 were back. You said you were going to look up some old
3 friends and hoping to rekindle some relationships. How
4 did it go?

5 A. I was still friends with two main people in my life
6 who had stayed in touch with me when I was in Egypt. I
7 had a very rough time in Egypt, actually, so I was relying
8 on people over the phone to be talking to me. And when I
9 came back, at first things seemed okay with my friends.
10 But by the end of the quarter when I went down with
11 Jocelyn, who had been my roommate when the crash had
12 happened, actually, to our hometown, we came back on the
13 same bus together, and I received a message from my friend
14 at the time saying, "I don't want to ever see you again.
15 I don't want to speak to you anymore. I don't want to
16 have anything to do with you."

17 I had been trying to plan -- like get tickets to an
18 event that she liked. Because I was bothering her about
19 what day are you free, this stuff. When she said that --
20 I mean if someone doesn't want to know you, then you can't
21 force yourself on them. So, yeah, I never contacted her
22 again after that. But I had asked Jocelyn, because they
23 had spoken together during that time together in our
24 hometown, I said, "Did she say anything?" She said no. I
25 kind of had a bad feeling, but I thought at least I'm

1 still friends with Jocelyn.

2 And a few days later, she mentioned she had been
3 talking with this girl, Abigail, and that -- I didn't know
4 what was happening, I had a bad feeling, but the result of
5 it was that on December 31st, the last day of the year of
6 2019, I had been planning to jump in a lake with her.
7 That was a tradition we had. And when I called her, she
8 kind of told me -- Abigail told me, you said all these
9 things. I had said some hurtful things during the time
10 after the train accident. I was very alone. She was my
11 roommate at the time, but her father had died a week after
12 the accident, so we were both very much hurting and in
13 very dark, painful places. I had said hurtful things.
14 And it was bad. So she was very resentful about this.
15 She said hurtful things as well. And so I hung up the
16 phone. I blocked her on everything and haven't really
17 spoken to her since then.

18 Q. So, Emily, you have not only gotten to a place where
19 you apparently have said things to friends that have
20 caused them to shut you out, but you have also been hurt
21 and shut your friends out?

22 MR. BONVENTRE: Objection. It's leading.

23 THE COURT: Overruled.

24 THE WITNESS: Yes.

25 BY MR. PETRU:

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1 Q. Staying in the same month, December 2019, a year
2 after you and Hanna were in London, where were you on
3 December 18th, 2019, on the two-year anniversary of the
4 crash?

5 A. On December 2019?

6 Q. I'm sorry. December 18th, 2019, the two-year
7 anniversary.

8 A. Yes. I had found where the accident -- the
9 derailment had occurred. So I went to the site. I went
10 there and just kind of wanted to see where it all had
11 happened. I was very moved. I was crying. Someone had
12 put up a cross there to commemorate the people who had
13 died and kind of the investigation overall. I just wanted
14 to, I don't know, remember what had happened.

15 There is this golf course nearby. I went in there, I
16 had -- I had I think three shots of vodka to commemorate
17 the three people that had died. It was just a weird
18 tradition I did.

19 Q. Every year on the anniversary, do you think about it
20 or do something, or if you are in town -- have you been
21 back more than once on December 18th to the site?

22 A. Yes.

23 Q. And when you are not here, do you do something
24 wherever you are?

25 A. Yes. Usually the month of December is very bad for

1 me. I'm thinking about the accident. I'm very emotional.
2 I'm kind of all over the place. So on the actual day of
3 the accident, I really prefer to be alone. I just kind of
4 want to sit somewhere and cry, just, I don't know -- I
5 don't want to be around people and try to have a happy day
6 with them when there is something like that on your mind.

7 Q. In 2020, you did some externship work, university
8 credit, but you weren't going to campus, correct?

9 A. In 2020?

10 Q. I think those are the years.

11 A. Yes.

12 Q. Didn't you get an internship at the State Capitol and
13 was working at the State Capitol?

14 A. Yes, the winter quarter of 2020, I was doing a
15 legislative internship at the State Capitol, correct.

16 Q. And after that you worked on a campaign, correct?

17 A. Yes.

18 Q. And after that you took a short break, and then went
19 to Egypt?

20 A. No.

21 Q. I'm off a year. I'm off a year. Four and a half
22 years is a long time to cover.

23 A. Exactly.

24 Q. Sorry about that. It was in December of 2020, if I'm
25 not mistaken, after the campaign that you worked on, you

1 took a break and went by yourself to Phoenix?

2 A. Yes, in December of 2020 I went to Phoenix.

3 Q. What happened when you were in Phoenix? What did you
4 do?

5 A. Go ahead.

6 Q. What did you do?

7 A. Yes. Yeah, I didn't want to spend Christmas or New
8 Year's with my family, and I didn't really have anyone
9 else to spend it with, so I thought I should just --
10 rather than stay home alone, go someplace else. So for
11 some reason, I went to Phoenix. I went hiking quite a
12 bit. And this kind of led to -- very poorly planned trip.

13 On my last day there, I kind of went out to something
14 called the Deception Mountains. It looked very nice. I
15 knew there was a hike, but I didn't know much about it, I
16 guess. So by the time I finally arrived at 1:00 p.m. and
17 started the hike, I was hoping I would see markers on the
18 trail. And honestly, the hikes are very different from
19 Washington's, so I got miserably and utterly lost. I was
20 very turned around. And it had been nightfall. I had
21 just a few granola bars and one bottle of water at that
22 point. And I became very lost. I didn't get out of there
23 until 1:00 a.m. actually. And it was a miracle I made it
24 to my flight.

25 Q. Were there other circumstances like that that you

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1 took risks, made decisions that put yourself in an unsafe
2 situation that Emily Torjusen before this crash would
3 never have done?

4 MR. BONVENTRE: Objection, your Honor.

5 THE COURT: Basis?

6 MR. BONVENTRE: Lack of foundation, Judge.

7 THE COURT: Overruled.

8 THE WITNESS: I would say that I am more reckless
9 in the way that I don't -- I'm not very good at planning
10 for things. I will just kind of on a whim decide to do
11 something, and then before I know it, I realize I am very
12 ill-prepared for whatever I decided to do. This can lead
13 to some kind of desperate situations. I have been very
14 lucky throughout my life where I get out of it.

15 BY MR. PETRU:

16 Q. Did you take that kind of risk, poor planned,
17 impulsive excursions that put you in harm's way, prior to
18 the crash?

19 A. No. I was a very thoughtful person. I planned well.
20 I knew what I was doing more often.

21 Q. Do you find -- you are aware of the fact that you
22 have these impulses and you do things on impulse, and that
23 you take risks. Why don't you control it? What do you do
24 to try to control it to eliminate that risk in your
25 ongoing life?

1 **A.** I think at this point, I have kind of realized the
2 best thing for me is to kind of have a more simple life,
3 stick to the things that I know, you know, not venture out
4 into things I don't know very well, stick with people who
5 know what they are doing, because I don't, and things like
6 this.

7 **Q.** Is that -- how does that affect you if there is
8 something you might want to do but you are concerned about
9 it and then you don't do it? Do you feel like you are
10 taking opportunities from yourself or depriving yourself
11 of certain aspects of normal life? How do you -- how do
12 you justify that in your own mind?

13 MR. BONVENTRE: Objection. Leading.

14 THE COURT: Overruled.

15 THE WITNESS: I feel like I am trying to be
16 realistic. I realize that there are some things that I
17 struggle with, that I am probably never going to really
18 master, going to get better at. So the best thing for me
19 now that I am an adult and I am responsible for myself is
20 to try to protect myself in this way.

21 BY MR. PETRU:

22 **Q.** Do you still find that you have symptoms of the head
23 injury? For example, are there periods where you have
24 attention or concentration problems now?

25 **A.** Yes. I still struggle with concentration. I kind of

1 have a wide range of tasks that I feel like I need to do
2 throughout the day, and I never really get them done. I
3 kind of jump around from one thing to another to another,
4 and I feel like I never do any of them the right way, the
5 quality way. It is more a half of this, half of that. I
6 get headaches still, especially if I get very angry or
7 stressed out.

8 Q. Share with us, if you will, the frequency with which
9 you get a headache. We are going to talk about headaches
10 for a moment. How often do you get a headache without
11 regard to its nature or severity?

12 A. Probably three times a week.

13 Q. Are they the same when you get headaches or are they
14 different?

15 A. What do you mean?

16 Q. In location.

17 A. In location? I feel like it kind of depends on what
18 caused the headache. I will sometimes have a headache
19 behind my eyes, or my ear, or in the back of my head.

20 Q. What is the range of severity of your headaches?

21 A. It can start as something very sharp, but usually it
22 kind of fades into a pulsing sort of pain.

23 Q. Do the headaches ever get to the level that you have
24 to stop what you are doing, just stop for the day and take
25 a break or go to a quiet room or something like that?

1 A. No. I will take ibuprofen. No, my work shouldn't
2 suffer because of a headache.

3 Q. You just soldier through it, as it were?

4 A. Yes.

5 Q. Do you get any nausea still?

6 A. Yes.

7 Q. And what circumstances do you get nauseous?

8 A. It is hard to say. I will be nauseous very often,
9 but I don't know -- especially now, I don't know if that
10 is because of the food I eat or if it is just a feeling.
11 If I feel nervous about something, I do feel nauseous. I
12 do feel nauseous regularly.

13 Q. I should have been more specific. There was nausea
14 you had early on after the incident where you had
15 headaches, nausea, balance issues, problems that were part
16 of the symptoms associated with the concussion?

17 A. Um-hum.

18 Q. Do you get that kind of nausea anymore or is it a
19 different thing now?

20 A. I believe it is different now. I have poorer
21 balance. I kind of sometimes fall, or I have trouble
22 catching my balance when I am walking. I have the
23 headaches more often.

24 Q. Let's talk about balance for a second. Prior to the
25 crash, did you have any balance problems?

1 A. No. I had very good balance.

2 Q. Balance as in ballerina?

3 A. A very bad ballerina.

4 Q. Bad ballerina. Share with the jury the kinds of
5 problems you have associated with balance in your
6 experience since the incident?

7 A. I don't know. Sometimes, you know, you get up from a
8 chair and you find yourself kind of leaning more to one
9 side so you have to shift your leg over to catch yourself,
10 or you find yourself walking down the street, and you are
11 kind of tilted, so you have to kind of catch yourself with
12 your other foot. It is not severe, but it is noticeable,
13 to me at least.

14 Q. Have you fallen?

15 A. Have I fallen? Sometimes. Like getting up out of
16 bed in the morning when I was straightening the bed sheets
17 and everything, I kind of fell to one side, but I caught
18 myself.

19 Q. Do you have a reaction to news reports, articles
20 about transit crashes, for example? It was a couple of
21 weeks ago now, maybe last week, there was the crash in
22 China, the airplane crash. Do those kinds of reports
23 affect you at all?

24 MR. BONVENTRE: Objection, your Honor.
25 Relevance.

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1 THE COURT: Overruled.

2 THE WITNESS: Yes. I think it is a reminder. I
3 mean, particularly every time Amtrak has a crash. But any
4 time transit, in general, I have seen airplane accidents,
5 bus accident, things like this, it is a reminder that the
6 world is a very unsafe place now. I don't feel safe at
7 all knowing this. And it feels -- it affects me
8 emotionally. I am reminded of what happened to me and so
9 many other people.

10 BY MR. PETRU:

11 Q. When it affects you emotionally, does it shut you
12 down for a period of time until you can regather?

13 A. I am say I become withdrawn. I am contemplating
14 something that most people don't understand.

15 Q. It might be obvious from your answers, but do you
16 feel like you are the same person you were before
17 December 18th, 2017?

18 A. No.

19 Q. Do you have any shoulder pain anymore?

20 A. I work long hours at a desk, so it does affect me.
21 It kind of becomes a stabbing pain throughout my shoulder.
22 You know, sometimes I become stressed out, worried about
23 something, and then I also notice that it occurs.

24 Q. We talked a while ago about your relationship, you
25 have a partner currently. Before the incident, before the

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1 crash when you thought about your life unfolding, I
2 understand that one of the things you thought you would do
3 that you wanted to do was to work in the foreign service,
4 the State Department, working for the country in some
5 capacity, correct?

6 A. Yes.

7 Q. What happened to those dreams and plans?

8 A. Now I realize that those are probably unrealistic.

9 Q. Why do you feel they are very unrealistic?

10 A. Given who I am, I am probably not a good fit for
11 something like this, which requires a lot of a person,
12 someone -- you require a security clearance in most cases,
13 and that is something I think is very unlikely I would
14 ever obtain.

15 Q. Would you hire yourself for that job?

16 MR. BONVENTRE: Objection, your Honor.

17 THE COURT: Sustained.

18 BY MR. PETRU:

19 Q. Before the crash, how did you envision that your life
20 would unfold besides getting a job with the State
21 Department? What did you see in the near or the distant
22 future for Emily Torjusen as a 20-year-old, in terms of
23 how your life would unfold?

24 A. I had hoped, you know, to get a master's degree, to
25 learn Arabic, to become fluent in it, do something related

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1 to the Middle East, work in politics, and then, you know,
2 have a family. I didn't want to really die alone. I had
3 always hoped that once I would be maybe even a professor
4 in college. I was very optimistic.

5 Q. Do you see yourself having a family?

6 A. Now? I think it is unlikely.

7 Q. You have something you brought with you that you keep
8 wherever you go, from the crash. What is it?

9 A. I was wearing a watch the day of the accident.

10 Q. Do you have it with you?

11 A. I do.

12 Q. May I have it?

13 MR. PETRU: Your Honor, this has been identified
14 as Exhibit 37, I think. For purposes of -- for
15 Mr. Torjusen's sake, what I would like to do is show it to
16 the jury but not have the court receive it, so that she
17 can keep it.

18 THE COURT: Are you offering it into evidence?

19 MR. PETRU: I am offering it as demonstrative so
20 the jury can see her watch.

21 THE COURT: All right. You may do that.

22 MR. PETRU: Thank you. I will circulate it.

23 BY MR. PETRU:

24 Q. Why do you keep that watch?

25 A. When they gave it back to me after I left the

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1 hospital, I looked at it and I really realized I could
2 have died, like that was it, like my body went through
3 that. I went through that. It is very important to me.

4 Q. You keep it in the bag that you were given at the
5 hospital?

6 A. Yes.

7 Q. Thank you for sharing it.

8 MR. PETRU: Your Honor, would this be a good time
9 to break?

10 THE COURT: How much more time do you have?

11 MR. PETRU: I might have five more minutes.

12 THE COURT: Let's finish up with your direct.

13 BY MR. PETRU:

14 Q. You understand the train crash was beyond your
15 control?

16 A. Yes.

17 Q. You are not responsible for it?

18 MR. BONVENTRE: Objection, your Honor.

19 THE COURT: Overruled.

20 THE WITNESS: Yes, I am not responsible for it.

21 BY MR. PETRU:

22 Q. How has the train crash affected your sense of
23 safety, of being in control of your own life?

24 MR. BONVENTRE: Objection. Asked and answered.

25 THE COURT: Overruled.

1 THE WITNESS: In most situations, I don't feel
2 very safe. I feel -- I startle very easily. I feel like
3 the world is a different place after what I experienced.

4 BY MR. PETRU:

5 Q. How about in your everyday life?

6 A. I think I really prefer to be in situations that I
7 can control and situations that I know and am familiar
8 with, and I know what to do and what will happen and how
9 people will react, what's the right thing to do. When I'm
10 in a situation with something that I don't understand or I
11 find difficult, you know, to deal with, it frightens me.
12 I don't really have a logical response to it.

13 Q. Is it hard living that way?

14 A. I think it is harder for other people to deal with
15 me. And it's hard for me to be alone like that.

16 MR. PETRU: Thank you. Those are all the
17 questions I have, your Honor.

18 THE COURT: All right. Jurors, we are at the end
19 of our trial day. I am going to ask you to return
20 tomorrow at 9:00. Have a restful evening, and remember
21 not to discuss the case.

22 (At this time, the jury exited the courtroom.)

23 THE COURT: You can step down. After
24 Ms. Torjusen, where are we at?

25 MR. PETRU: We have the stipulation that we have

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1 agreed upon that needs to be read. And then we will rest,
2 assuming that we have all the evidence in that we have
3 identified.

4 THE COURT: Assuming --

5 MR. PETRU: We have to verify. I always have the
6 tag line that I want to make sure we have the evidence in
7 that we have identified.

8 THE COURT: We will certainly do that. You will
9 have an opportunity to review that with Dara. I think we
10 can discuss at the completion of the trial the final
11 instructions, because -- I will have them given to you
12 tonight, a set that I am proposing. So before you leave,
13 I will arrange for that.

14 MR. PETRU: Thank you, your Honor.

15 MR. BONVENTRE: Before we leave tonight, before
16 we leave the courtroom tonight?

17 THE COURT: Yes. We will be in recess.

18 MR. BONVENTRE: Is it your intention we are going
19 to sum up as well?

20 THE COURT: Yes. I don't know how much time you
21 intend to cross-examine.

22 MR. BONVENTRE: I could guess, Judge, but it will
23 be around an hour, give or take.

24 THE COURT: I believe we will be able to begin
25 the closing before noon and submit it to the jury.

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1 MR. PETRU: Thank you, your Honor.

2 MR. BONVENTRE: Thank you, your Honor.

3 (Recessed.)

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5
6
7 C E R T I F I C A T E

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9
10 I certify that the foregoing is a correct transcript from
11 the record of proceedings in the above-entitled matter.
12

13
14
15 /s/ *Barry Fanning*

16 BARRY FANNING
17 COURT REPORTER
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